LAW COMMISSION

OF

INDIA

THIRD REPORT

(LIMITATION ACT, 1908)

GOVERNMENT OF INDIA ● MINISTRY OF LAW

180 M of Law.—1.

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CHAIRMAN
Law Commission.
New Delhi
July 21, 1956.

Shri C. C. Biswas,
Minister of Law
& Minority Affairs,
NEW DELHI.

MY DEAR MINISTER,

I have great pleasure in forwarding herewith the third Report of the Law Commission, on the Limitation Act.

2. At its first meeting held on the 17th September 1955, the Commission decided to take up the revision of the Limitation Act and entrusted the task to a Committee consisting of Sri R. Satya narayana Rao and Sri V. K. T. Chari.

3. The consideration of the subject was initiated by Sri Rao, the senior Member of the section of the Commission dealing with Statute Law Revision who formulated a scheme for the revision of the Act. The principles underlying the scheme were discussed at a meeting of the second section held on the 11th February 1956. A draft Report prepared in the light of the discussion was circulated to all the Members of the Commission and their views invited thereon. These views with the draft Report were discussed at meetings of the Statute Revision Section held on the 11th March 1956 and the 14th April 1956. Important suggestions made by Members at these meetings were accepted and certain questions were referred to the Committee for further consideration. The Report was again discussed at a meeting of the Statute Revision Section held on the 12th May 1956 and it was left to the Chairman and Sri Satyanarayana Rao to finally settle the Report in the light of the discussion.

4. Dr. N. C. Sen Gupta while signing the Report has added a separate note on two points on which he has taken a view different from that in the Report. Sri S. M. Sikri being outside India is unable to sign the Report but he concurs in its recommendations.

Yours sincerely,
M. C. Setalvad.

CHAIRMAN
LAW COMMISSION.

NEW DELHI;
July 2, 1956.

Shri C. C. Biswas,
Minister of Law &
Minority Affairs,
NEW DELHI.

MY DEAR MINISTER,

I have great pleasure in forwarding herewith the Second Report of the Law Commission dealing with the principles to be embodied in Parliamentary legislation relating to Sales-tax.

2. On the 23rd March 1956 the Ministry of Law referred to the Commission the question of the principles that should be formulated by Parliamentary legislation for determining when a sale of goods takes place (a) outside a particular State, (b) in the course of import or export, or (c) in the course of inter-State trade or commerce.

3. The reference was considered at a meeting of the Statute Revision Section of the Commission held on the 14th April 1956 and a Committee consisting of Sri G. S. Pathak and Sri G. N. Joshi was appointed to make a preliminary study of the question. The subject was again discussed at the next meeting of the Section held on the 11th May 1956. Thereafter a note prepared by the Committee was circulated to all Members of the Commission and their views invited thereon. The views solicited and the note prepared by the Committee were fully and finally discussed at a meeting of the Statute Revision Section held on the 9th and 10th June 1956. Certain conclusions were reached at that meeting and it was left to the Chairman to prepare the Report in the light of the discussion.

4. In view of the request of the Ministry that the Report might reach them early so that the preparation of the necessary Parliamentary legislation might be expedited, the Report is being submitted though it has not yet been formally signed by the Members. The Report has, however, been circulated to all the Members and the concurrence of all the Members excepting that of

Sri S. M. Sikri who is out of the country has been obtained. The Report will be signed by the Members at the ensuing meeting of the Commission to be held on the 21st July 1956. Dr. N. C. Sen Gupta will sign the Report subject to a separate note a copy of which has been annexed to the Report.

5. The Commision wishes to acknowledge the services rendered by its Joint Secretaries Sri K. Srinivasan and Sri D. Basu in connection with the preparation of the Report.

Yours sincerely,

(Sd.) M. C. Setalvad.

REPORT

I. PRELIMINARY

1. The Law Commission was invited to offer its suggestions for formulating principles for determining when a sale of goods takes place—

(i) outside a State;

(ii) in the course of the import of the goods into, or export of the goods out of, the territory of India;

(iii) in the course of inter-State trade or commerce

2. At the date of the reference to the Commission the Constitution (Tenth Amendment) Bill had been introduced in Parliament and under it Parliament was to be empowered to formulate by law principles for determining when a sale or purchase of goods takes place in any of the ways mentioned above. The Bill has since been passed by both Houses of Parliament.

3. Broadly speaking, the proposed Constitutional Amendment seeks to curtail the power of States to levy taxes on the sale or purchase of goods other than newspapers by providing that that power is to be subject to the power of the Union to levy taxes on the sale or purchase of goods other than newspapers where such sale or purchase taxes place in the course of inter-State trade or commerce. The taxes levied by the Union in exercise of this added power are to be assigned to the States. The Amendment seeks to empower Parliament by law to formulate principles not only for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce but also for determining when a sale or purchase takes place in the course of import into, or export out of the territory of India or outside a particular State.

4. The proposed Constitutional Amendment closely follows the recommendations of the Taxation Enquiry Commission in this respect. Their main purpose in recommending that Parliament should have power to tax inter-State transactions and that it be empowered by law to determine the principles above mentioned was to ensure that the tax, if any, on these transactions should not exceed limits which Parliament in the interest of the country as a whole considers reasonable and that the principles laid down

not having the rigidity of Constitutional provisions may be varied in accordance with the economic needs of the country from time to time. (Report of the Taxation Enquiry Commission, Vol. III, pp. 48-60, paras 7-22).

II. SALES OR PURCHASES IN THE COURSE OF IMPORT OR EXPORT.

5. It is convenient to take first the question of the appropriate principles to determine when a sale or purchase takes place in the course of import or export. The formulation of these principles presents the least difficulty.

6. In the *Travancore-Cochin Cases* [(1952) S.C.R. 1112 and (1954) S.C.R. 53] the Supreme Court considered Article 286 (1) (b) and held that the clause covered two classes of cases: (i) sales and purchases which themselves occasioned the import or export, (ii) sales or purchases effected by a transfer of shipping documents when the goods are beyond the customs frontiers of India.

7. The interpretation put by the Supreme Court on the clause was considered by the Taxation Enquiry Commission who stated that the position arising from the interpretotion put by the Supreme Court was "prefectly satisfactory so far as foreign trade is concerned". (T.E.C. Report, p. 48, para 7). The Law Commission had also before it the views of the Ministry of Finance on this question. The Ministry was of the view that the decision given by the Supreme Court had been accepted by almost all the States and no difficulties were reported to have arisen as a result of the Supreme Court judgment.

8. Reference may here be made to the view expressed by DAS J. in his dissenting judgment in the second *Travancore-Cochin Case* (1954 S.C.R. 53) that a sale or purchase in the course of import or export includes the first sale after import except by a retailer and the last purchase preceding the export. This view was based partly on an interpretation which laid stress on the word "course" in the expression "in the course of import or export" used in the Constitution. It also arose from a desire not to impede the import or export trade of the country by subjecting sales or purchases linked with the importing sale or exporting purchase to the burden of the sales-tax. In so far as the latter consideration is concerned the views of the Taxation Enquiry Commission and the Finance Ministry would seem to show that the apprehension that the import or export trade of the country would be impeded if the majority interpretation of the clause were accepted is not welfounded. In so far as the view is based on the interpretation of the word "course", in our opinion that approach, if logically

pursued, will not stop with the sale following the import or the purchase preceding the export. The stream of export may legitimately be said to commence even at the stage of the production of raw materials or of the manufacture of finished goods intended for export. In this connection the following observations of MCKENNA J. in *Heisler v. Thomas Collery Co.* made in dealing with the question of inter-State commerce are pertinent: [(1922) 260 U.S. 245].—

> "If the possibility or, indeed certainty, of exportation of a product or article from a State, determines it to be in inter-State commerce before the commencement of its movement from the State, it would seem to follow that it is in such commerce from the instant of its growth or production; an in the case of coals, as they lie on the ground".

We do not, therefore, see any justification for recommending the adoption of this view.

9. The Ministry of Commerce and Industry has mentioned the desirability of including the last purchase preceding the export as a transaction in the course of export on the ground that the exemption of such transactions from tax will stimulate exports. It was not, however, suggested that a similar exemption should be granted to the first sale following the import. It appears to us to be somewhat illogical that the last purchase preceding the export should be exempt whereas the first sale following the import should not be exempted. We are, therefore, unable to accept this suggestion.

10. Under this head, we, therefore, recommend the acceptance of the principles laid down by the Supreme Court. We would express them in the following manner:—

> A sale or purchase of goods shall be deemed to take place in the course of export of the goods out of the territory of India, only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India.

> A sale or purchase of goods shall be deemed to take place in the course of import of the goods into the territory of India, only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.

III. INTER-STATE SALES OR PURCHASES.

11. In considering the principles for determining when a sale or purchase takes place in the course of inter-State trade or commerce, two important aspects have to be borne in mind. First, such a sale or purchase is not to be exempt from tax as in the case of a sale or purchase in the course of import or export. It is to be taxed by the Union. Secondly, the proceeds of such a tax are under the amended article 269 to be assigned to the States. These sales have to bear the burden of the sales-tax but the burden is to be strictly limited by the Union in the interest of trade and commerce throughout the territory of India which has, according to the policy underlying the Constitution, to be free and unrestricted.

12. No doubt the expression "in the course of inter-State trade or commerce" has a very wide connotation. In India we are, however, not concerned with the regulation of commerce generally among several States as under the commerce clause in the American Constitution. What we have to determine is what is *a sale or purchase* in the course of inter-State trade or commerce. The problem, therefore, is to ascertain what transactions of sale or purchase can fairly be said to arise in the course of inter-State trade or commerce. For this purpose we have to fix upon some characteristics of these transactions which can well be said to stamp them with an inter-State character. In the large mass of American decisions under the commerce clause the one element which is stated to be an indispensable incident of commerce between the States is the movement of the goods which are the subject-matter of the sale or purchase from one State into another. We may refer in this connection to the definition of "inter-State commerce" given by *Rottschafer* in his "Constitutional Law" (1939 Ed. p. 299):—

> "The activities of buying and selling constitute inter-State commerce if the contracts therefor contemplate the movement of goods in inter-State commerce".

Later he adds (p. 235):

> "The decisive factor that renders making a contract an act of inter-State commerce is that it contemplates or necessarily involves the movement of goods in inter-State commerce, and this test applies whether it be a contract to buy or one to sell".

13. It will be noticed that in the American view even a contemplated movement of goods which in fact may not have taken place would invest the transaction of sale or purchase with an inter-State character. Such a wide view based on the intention of the parties to the contract may, we think, well lead to uncertainty and difficulties in administration and conflicting legal views. We would, therefore, recommend a simpler and a more certain test to determine whether a transaction of sale or purchase is an inter-State transaction. Only a transaction which has in fact occasioned the movement of goods from one State into another should be regarded as an inter-State transaction. Such a test would be easy to apply by the authorities administering the law as what will have to be ascertained will be the physical movement of the goods from one State into another in consequence of the transaction. Such a test has the added advantage of being similar to and parallel with the test which we have proposed for determining when transactions take place in the course of import into or export out of the territory of India. As a sale or purchase which has occasioned import or export is one in the course of import or export so is a sale which has occasioned movement of the goods from one State into another a sale in the course of inter-State trade or commerce.

14. Such a test will avoid the necessity of entering into the difficult question as to when inter-State trade or commerce begins and when it ends, a subject on which there is a mass of decisions of the American courts.

15. A sale or purchase should itself have occasioned the movement of the goods from one State into another in order that it may have an inter-State character. If a purchaser in State A completes a purchase of goods in that State the transaction will be an intra-State transaction even though he may have the intention after the purchase of sending the goods to State B and does in fact do so. The sale made to him or the purchase made by him has not occasioned the movement of the goods from one State into another. Similarly if a purchaser from State A goes to State B and purchases goods in State B the transaction again will be of an intra-State character though the purchaser may have purchased the goods with a view to send them to State A and does in fact do so. The sale to him or purchase by him has again not occasioned the movement of the goods from State B into State A. When, however, in consequence of a sale or purchase goods are delivered to a carrier or other bailee for transmission to another State the transaction would clearly be of an inter-State nature.

16. The question whether on the analogy of the principles adopted in connection with sales or purchases in the course of

import or export a sale effected by the transfer of documents during the movement of goods from one State to another should be regarded as an inter-State sale or purchase has received our careful consideration. We are of the view that such sales or purchases should be regarded as inter-State transactions. It was suggested that if the rate of inter-State tax happened to be lower than the rate of the tax levied by the State on intra-State transactions the adoption of this principle might lead to attempts by dealers to evade the higher tax of the State by giving intra-State transactions the appearance of inter-State transactions by the creation of fictitious records showing the movement of the goods from one State into another. We are not inclined to attach much importance to this suggestion as in any case the sale or purchase will not escape taxation altogether and it is unlikely that dealers would resort to such attempts in order to save the difference between the inter-State and the intra-State tax. Moreover, if this principle is not applied considerable administrative and other difficulties will arise. We are, therefore, of the view that sales and purchases effected by a transfer of documents during the movement of goods from one State to another should be regarded as inter-State transactions.

17. For the limited purpose of the principle mentioned in the preceding paragraph it will become necessary to provide when the movement of the goods is to be regarded as having commenced and terminated in cases where goods are delivered to a carrier or other bailee for transmission to another State. For this purpose we propose to frame a principle based on the provisions of section 51 of the Sale of Goods Act.

18. The principles for determining when a sale or purchase takes place in the course of inter-State trade or commerce may be framed in the following manner:—

"A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce, only if the sale or purchase—

(a) occasions the movement of the goods from one State to another, or

(b) is effected by a transfer of documents of title to the goods during their movement from one State to another.

Explanation.—Where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purposes of sub-clause (b), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee."

IV. Sales or Purchases Outside A State.

19. The laying down of principles for determining when a sale or purchase takes place in the course of inter-State trade or commerce does not relieve us of the necessity of laying down principles for determining when a sale or purchase takes place outside a State. The Taxation Enquiry Commission has pointed out that all transactions of sale or purchase not made in the course of import into or export out of the territory of India should suffer sales-tax which is increasingly becoming one of the main sources of the revenues of States. At the same time provisions have to be framed to prevent the same transaction of sale or purchase being taxed by more than one State. The main purpose of Article 286(1) (a) is to prevent the multiple taxation of a single transaction. A test which can be applied with little difficulty in order to determine whether a transaction of sale or purchase is without or within a State can alone prevent such overlapping taxation.

20. As stated by the Supreme Court, the general law of the sale of goods while it lays down *when* a sale takes place nowhere provides *were* a sale is deemed to take place. The problem of giving a situs to a sale is not free from difficulty. A transaction of sale has several ingredients. The essential ingredients are:

(a) the conclusion of the contract of sale,

(b) the appropriation of the goods to the contract,

(c) the passing of the property in the goods,

(d) the payment of the price, and

(e) the delivery of the goods.

One or more of these ingredients have been used in the legislation enacted by the States for fixing the situs of a sale within a particular State. The question for consideration is which out of these ingredients affords a certain and easily workable basis for fixing the situs of a sale.

21. The Explanation to Article 286(1) (a) which is now proposed to be omitted attempted to fix as the situs of a sale the State in which goods were actually delivered for consumption. That attempt led to numerous difficulties. Controversies arose as to what constituted actual delivery and consumption. In effect that provision laid down that the tax should go with consumption and that the exporting State should not be entitled to levy any part of it. As

pointed out by the Taxation Enquiry Commission the Constitutional provision as interpreted placed the exporting States and States with a backward economy in a disadvantageous position. (T.E.C. Report, p. 48, para. 8). In selecting the appropriate ingredient with reference to which the situs of a sale may be determined these considerations will have to be borne in mind.

22. We are of the view that the location of the goods will be a very suitable test to apply in determining the situs of a sale. The physical existence of the goods at a place at a particular time is easily capable of ascertainment and such a test will avoid legal controversies. The difficulty, however, is in fixing the point of time at which the location of the goods should be taken as determining the situs of the sale. Is it to be the time of the making of the contract or the appropriation of the goods to the contract or the passing of the property in the goods or the delivery of the goods? We have given very careful consideration to the various questions which would arise in the event of one or the other of these points of time being taken with reference to the location of the goods as indicative of the situs of a sale. We have come to the conclusion that in the case of all sales of specific or ascertained goods their location at the time of the making of the contract of sale should determine their situs for the purpose of article 286(1) (a). In regard to unascertained or future goods two views were considered by us. It was suggested that in regard to such sales the location of the goods at the time when the goods first became ascertained should be taken as the situs of the sale. The other suggestion was that the location of the goods at the time of their appropriation to the contract of sale should be regarded as the situs of the sale. We rejected the former view as the ascertainment of goods with reference to contracts for the sale of unascertained or future goods is not a distinct legal concept. Ascertainment is but a part of the process of appropriation which is a well-accepted legal concept and which results, generally speaking, in the passing of property in the goods. We are, therefore, of the view that in the case of sales of unascertained or future goods their location at the time of their appropriation to the contract of sale should be the test for determining the situs of the sale.

23. In some cases of the sale of unascertained or future goods it may happen that the seller or the buyer may make an appropriation of the goods without the assent of the other party and put them into the course of transit. It may in such cases happen that the location of the goods when the assent of the buyer or seller is given to the appropriation may be different from their location at the time when the seller or the buyer made the appropriation. We do not know whether such cases would arise frequently in practice. But in order

to provide for them we have in framing the principle used language which makes it clear that the location of the goods at the time of the appropriation by the seller or the buyer irrespective of their location at the time when the assent of the other party is given to the appropriation should be the decisive factor in determining the situs of the sale.

24. We have thought it necessary also to provide for cases where a single contract of sale comprises goods located in different States. In order to obviate difficulties in determining the situs of the sale by reference to the location of the goods in such cases we have suggested that such contracts of sale or purchase should be regarded as separate contracts in respect of the goods situated at different places.

25. Article 286(1) (a) of the Constitution prohibits a State from taxing a sale outside the State. The principles we have suggested will indicate the State within which the sale has taken place. It will, therefore, have further to be provided that as soon as a sale is deemed to have taken place within a State it shall be deemed to have taken place outside all other States. It will be recalled that the absence of such a provision in Article 286(1) (a) read with the Explanation proposed to be deleted caused a great deal of controversy and resulted in varying interpretations being put on that Article read with the Explanation.

26. The principles we enunciate under this head are as follows:—

"1. A sale or purchase of goods shall be deemed to take place where the goods are—

(a) in the case of specific or ascertained goods, at the time the contract of sale is made; and

(b) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale, by the seller or by the buyer whether the assent of the other party is prior or subsequent to such appropriation.

Explanation.—Where there is a single contract of sale or purchase of goods situated at more places than one, the above provision shall apply as if there were separate contracts in respect of the goods at each of such places.

2. When a sale or purchase of goods is determined in accordance with sub-clause (1) to be within a State, such sale or purchase shall be deemed to have taken place outside all other States."

V. Conclusion

27. We may point out that we have not before us the draft of the proposed Parliamentary legislation and the principles indicated by us in the foregoing paragraphs do not purport to be a draft of the sections of the proposed Bill.

M. C. SETALVAD
(*Chairman*),
M. C. CHAGLA,
K. N. WANCHOO,
G. N. DAS,
P. SATYANARAYANA RAO,
*N. C. SEN GUPTA,
V. K. T. CHARI,
D. NARSA RAJU,
G. S. PATHAK,
G. N. JOSHI.
(*Members*).

K. SRINIVASAN,
DURGA DAS BASU,
Joint Secretaries.

BOMBAY;
The 21st July, 1956.

*Dr. Sen Gupta has signed the report, subject to the note appended below.

SEPARATE NOTE ON INTER-STATE SALES TAX

I regret that I have to differ from some of the conclusions of the majority of my colleagues. I wish to make it clear also that I do not concur in all their arguments for the other conclusions from which I do not disagree.

The laws regarding sales "in the course of import or export" and "in the course of Inter-State trade" have been sufficiently complicated by the four decisions of the Supreme Court where judgments proceed to discuss a multitude of matters. What is wanted now is a simpler and more clear-cut definition of the principles for deciding the matter. In considering the principles we should not be too much influenced by the fear that some transactions may escape taxation, if a particular view is taken. That may or may not be,—though I should add that so far as export and import are concerned, there are very good reasons for thinking that there would be no case of escaping taxation altogether. Export and import are in most cases subject to another tax, the customs duty; and if by chance the goods exported or imported happen to escape the imposition of sales tax, that would not mean that the goods will necessarily go free of tax altogether. I am mentioning this as the majority report refers to this apprehension in the course of its reasons.

The Chief consideration in laying down the principles of taxation ought to be the interest of the trade and the consumers generally. Every taxation of goods adds to the burden that the consumer has to bear. With the rising prices and the many factors contributing to inflation, it would be far from wrong to desire that the burden should not be unnecessarily increased and that the trader should not be required to submit, not only to the payment of tax but also the harassment inevitable in connection with the assessment of the tax, more than is necessary.

A further and no less important aspect of the question is the bearing of the States' powers of taxation on the larger policy regarding foreign trade. Foreign trade is regulated by the Union, with reference to the current needs of the country as a whole, in part by manipulating the customs duties. There are occasions, due, for instance, to the overstocking of a particular commodity in India, or to the need for earning foreign exchange, when export of a commodity should be promoted by removing or reducing export

duties and conversely, import of commodities in short supply may have to be promoted by manipulating import duties. The powers of States to tax sales for such commodities by a too narrow limitation of sales in the course of "export or import" may easily hamper the freedom of the Union to influence prices by necessary manipulation of tariffs and may enable the States to frustrate the Union's policy. The power of States which they still retain after the Constitutional amendment to tax intra-State sales should not be so extended over commodities of foreign trade as to narrow the power of the Union to regulate prices for export and import from time to time as may happen when States are enabled to frustrate or nullify any act of the Union in the wider interests of the country, *e.g.* for reducing prices, by regulations for internal taxation on sales of the commodities which may wholly out-balance the effect of tariff changes on prices.

What is wanted is a simpler and more perfectly intelligible set of rules which will have regard to the interests not only of the finances of the State but also in a much larger measure to the interests of the trade and the consumers and the interest of the Union in respect of foreign trade. This will have to be specifically considered at the time of legislating under the new powers given to the Parliament by the Constitution. But we should bear in mind these principles in laying down the general principles also.

In the light of these remarks I should have the report modified in the following respects:

I. With regard to the sale in the course of export or import, the decision of the Travancore-Cochin case is purported to be followed with a rider which, in my opinion, makes the rule largely infructuous to prevent State taxation of sales in the course of export or import. I fully endorse the opinion of the Ministry of Commerce & Industry that the last purchase preceding the export should also be considered to be a sale or purchase in the course of export or import, which, incidentally appears to have been the view put forward by the Attorney General in the first Travancore-Cochin case. His argument is thus summarised in the judgment of the Chief Justice in A.I.R. 1952 S. C. at p. 367:

> "In addition to the sales and purchases of the kind described above, the exemption covers the last purchase by the exporter and the first sale by the importer, if any, so directly and proximately connected with the export sale or import purchase as to form part of the same transaction. This view was sponsored by the Attorney-General."

This interpretation accords more with the commonsense view of the expression "in the course of export or import".

The words "in the course of" must be given a proper meaning and would extend to transactions intimately connected with the export or import. There will be very few cases indeed in which a sale is made by a person who has the goods in stock and forthwith books it for export when alone the sale may be said to have 'occasioned' the export or import in terms of the opinion of the majority. In most of the commercial transactions a contract with a foreign agency for export or import of goods is made and on the strength of that, the exporter purchases goods from others and sells or the importer contracts to sell. Among other parties, the Government of India, some time ago used to export large quantities of jute goods and it is still exporting other commodities without ever having a stock. When there is an agreement with a foreign State like the U.S.A. or Argentina for the export of that quantity, the Government comes and places the orders with the Jute Mills and they deliver the goods at the Ship's side and look to the Government of India for payment and it does not "occasion" the export, but it is the purchase immediately prior to the export which is made by the Government. The majority report objects that if this is exempted, it will be illogical not to exclude the whole stream of transactions preceding the export and an American judgment is cited in support. But in legislating, the legislature is not bound to be logical. It can put its own limited construction upon the words used and it is no criticism of a legislation that if logical, it ought to extend to other items. If on a consideration of grounds of policy and other matters, the application is limited to less than what might be logically deduced, there will be no harm done. In my opinion, the same principle ought to apply to the first sale after import, if, as a matter of fact, the sale was made in pursuance to a contract prior to importation. It seems to me, therefore, that the draft in paragraph 10 of the definition of a sale or purchase in the course of export and import is too narrow. If this definition is given, there will be very few transactions in which the State imposition of sales tax would be excluded.

II. With regard to sales in the course of Inter-State trade or commerce, the meaning of the words, "In the course of Inter-State trade or commerce" appear to me to be unduly restricted. Undoubtedly if a sale is effected, which directly occasions the movement of goods or is effected by a transfer of documents of title during the movement from one State to another, it would be a sale in Inter-State trade. This definition, however, again makes the words "in the course of" practically infructuous. No attempt should

be made to limit "the course" of trade to the only two possible alternatives. There are other ways in which a sale may be effected Inter-State. For instance, a trader in Assam sends jute or tea to a warehouse in Calcutta in expectation of prospective Sale. Thereafter the seller enters into a transaction of sale of the goods in Assam when, the goods are located in the Calcutta warehouse and gives a firm delivery order to the purchaser and the purchaser takes delivery from the warehouse in Calcutta. In this case it is undoubtedly a case of Inter-State sale between Bengal and Assam, but it would not come under either of the clauses (a) and (b), as drafted, because the movement has not been occasioned by the sale but has preceded it and the transfer of documents has not taken place during the movement of one State from another but after it. The definition proposed would thus be, in my opinion, too narrow. I would prefer an interpretation as in the passages quoted from Rottschafer in paragraph 12,—with the proviso that the movement of goods should have taken place in pursuance to the contract. That would leave it to the court, with reference to the facts of a particular case to determine whether the sale contemplated and in fact was followed by the movement of goods from one State to another.

III. With regard to the question of the *situs* of sale also I find it difficult to agree fully in the conclusion that a sale should be deemed to take place where the goods are at the time the contract of sale is made or in the case of unascertained goods when the goods are appropriated to the contract. There will be difficulty in applying this test in some cases, for instance in the case where goods have been shipped by boat from a station in Assam to Calcutta to be warehoused there and a sale is effected before the boat arrives in Calcutta. In such a case it would be difficult to locate the place where the goods are at the date of the contract, assuming it to be specified goods. The difficulty is intensified by the fact that the boat which carries the jute passes through a foreign territory, that is, Pakistan and it may well be that at the date of the contract, the goods are in Pakistan, I think a simpler definition would be to say that a sale takes place outside a State when *either* the contract for sale *or* the delivery of the goods takes place outside the State. That would be a simple and easy test to apply, and it would violate no principle whatsoever, now that Article 286(2) is out of the way. I therefore sign the report,—subject to these comments.

(Sd.) N. C. SEN GUPTA.

REPORT

1. The question of the High Courts sitting in Benches at different places in a State has come to the forefront owing to the proposed re-organisation of the States. At present there are five High Courts in India that sit in Benches—the High Court of Punjab which has a Bench at Delhi, the High Court of Rajasthan which sits at Jodhpur and Jaipur, the High Court of Uttar Pradesh which has a Bench at Lucknow, the High Court of Travancore-Cochin which sits at Trivandrum and Ernakulam, and the High Court of Madhya Bharat which sits at Gwalior and Indore. It will be found that in all these instances the reason for the departure from the accepted principle that the High Court should be situated at the Capital of the State was owing to historical and political considerations. There is now a suggestion that this principle should be extended and that in some of the new States the High Court should sit in different Benches situated at different places. There is a provision in the States Re-organisation Bill (Clause 53) that the High Court for a new State and the judges and Division Courts shall sit at such place or places as the Chief Justice may, with the approval of the Governor, appoint. As the provision stood, the initiative for the formation of a Bench at a particular place would have come from the Chief Justice. This provision has been altered by the Joint Select Committee and the initiative for the formation of a Bench at a particular place has been transferred to the President. In other words, more emphasis has been put upon the political considerations that may necessitate the setting up of a Bench at a particular place.

2. In our opinion the question whether the High Court should sit as a whole at one place or in Benches at different places has to be considered solely from the point of view of the administration of justice—and political and sentimental considerations have as far as possible to be excluded. We are firmly of opinion that in order to maintain the highest standards of administration of Justice and to preserve the character and quality of the work at present being done by the High Courts, it is essential that the High Court should function as a whole and only at one place in the State.

3. The High Court is the highest Court of Appeal in the State and it is necessary that it should have the assistance of the best legal talent and the best equipped law library. It is also necessary that

it should work in a proper atmosphere and should be constantly conscious of the traditions built up by the Chief Justices and Judges in the past. With regard to the new High Courts the Chief Justice and Judges should be equally anxious to build up traditions similar to those of the older High Courts. This, in our considered view, is only possible if the Chief Justice and Judges sit at the same place and administer justice as a team.

4. If the High Court works in Benches it will be difficult if not impossible for the Chief Justice to have proper administrative control over the working of the Benches or the doings of his colleagues who will constitute the Benches. The cohesion and the unity of purpose that should exist among all the Judges of a High Court will necessarily be absent when some Judges sit at places far away from the principal seat of the High Court. Every court has an atmosphere and traditions. A new Judge coming to the Court becomes conscious of these and tries to act in conformity with them. These operate as a salutary corrective to the personal idiosyncracies of the Judge. This corrective will be completely absent in a Bench.

5. The High Court Bar acquires a justifiable reputation by appearing before the Judges of the High Court, by arguing important cases and by helping the Court finally to settle the law at the highest level. A Bench of the High Court can never expect to get assistance from such a Bar. A District or Taluka Bar, however competent it may be, cannot be compared to the High Court Bar. The litigant, therefore, appearing before a Bench will have to be satisfied with less competent advocacy or will have to spend much more by getting the services of some one from the High Court Bar.

6. A well stocked and well equipped library is essential to the proper working of the Court. Such libraries only exist in the High Courts. At other places where the Bench sits both the lawyer and the Judge will be considerably handicapped by the absence of this important and essential convenience.

7. In the High Court Judges are familiar with the judgments delivered by their colleagues from day to day. Being constantly in touch with each other they are in a position to consult with each other on points of practice so that there should be uniformity in the decisions given and certainty in the minds of the litigants as to how the Court will decide. If there are different Benches it is quite possible that one Bench may come to a decision contrary to the one given by another Bench a few days before. The High

Court will have to be frequently constituting Full Benches to resolve these conflicts.

8. As against these serious disadvantages are there any countervailing conveniences which the litigant will receive by the constitution of these Benches? It is said that in the India of today justice should be taken to the door of the litigant and therefore the litigant should not be compelled to go long distances to the High Court. This argument is based upon a complete misapprehension of the working of the High Court and the system of administration of justice in our country. In the trial of cases, both civil and criminal, undoubtedly the Court, functioning as a court of first instance, must be easily accessible to the litigant and his witnesses. The civil and criminal courts in the Talukas or Tehsils and at District-headquarters, Subordinate Judge's and the District and Sessions Courts in the District satisfy these needs. When the argument is put forward that in England the High Court Judge goes on circuit, it is forgotten that he goes as a court of first instance and never as an appellate court and under our system the Subordinate Judge and the District and Sessions Judge fulfil this role. As pointed out by the Civil Justice Committee of 1924-25: "The appellate side of the High Court does work which in England is done by the Court of Appeal". The presence of the litigant is not really necessary at the hearing of the appeal. He is not called upon either to give evidence or to help the court in any way by his presence. The appeal is decided on the record before the Court which has already been prepared by the court of first instance. Undoubtedly there are litigants who like to be present when their appeals are heard, but the expense involved is trifling. Therefore, the litigant will in no way be benefited by the setting up of different Benches of the High Court.

9. If the liberty of the citizen is to be safeguarded and the rule of law to be ensured, it is of paramount importance that the High Courts all over India should be strengthened. It was, it seems to us, unwise to have created so many High Courts after Independence. But that perhaps was also due to historical reasons. There are welcome signs now of a reversal of that policy. There are proposals for a common High Court for more than one State and in some of the new States one High Court will take the place of the High Courts which existed in the merging States. If the object of this new policy is to strengthen the High Courts, then that object will be totally defeated by the idea of setting up Benches. In effect the

High Court will be divided into several High Courts sitting at different places. The Benches will be nothing more than glorified District Courts.

10. It may be pointed out that a very large majority of those who have answered the Questionnaire issued by the Commission including the Judges of the Supreme Court who have answered it have expressed a view against the formation of Benches. Informed opinion is thus decisively against the proposed course.

11. As the re-organisation of the States is imminent and as the policy of constituting Benches may be given effect to in the very near future we have thought it our duty to make this Report in order to apprise the Government of India in time of the serious dangers underlying this policy. The efficiency of the administration of justice should, in our view, be the paramount consideration governing this matter. The structure and constitution of the Courts should not be permitted to be influenced by political considerations. That this has happened in the past in certain cases can be no valid ground for the extension of that policy. The Commission is of the view that we should firmly set our face against steps which would lead to the impairment of the High Courts with the inevitable consequence of the lowering of the standards of administration of justice.

M. C. SETALVAD,
(Chairman)
M. C. CHAGLA,
K. N. WANCHOO,
G. N. DAS,
P. SATYANARAYANA RAO,
V. K. T. CHARI,
D. NARSA RAJU,
G. S. PATHAK,
G. N. JOSHI.
(Members)

K. SRINIVASAN,
DURGA DAS BASU.
Joint Secretaries.

NEW DELHI,
The 22nd September 1956.

GMGIPD—L—767MofLaw—20-10-56—350

CHAIRMAN
Law Commission.
New Delhi
July 21, 1956.

Shri C. C. Biswas,
Minister of Law
& Minority Affairs,
NEW DELHI.

MY DEAR MINISTER,

I have great pleasure in forwarding herewith the third Report of the Law Commission, on the Limitation Act.

2. At its first meeting held on the 17th September, 1955, the Commission decided to take up the revision of the Limitation Act and entrusted the task to a Committee consisting of Sri P. Satyanarayana Rao and Sri V. K. T. Chari.

3. The consideration of the subject was initiated by Sri Rao, the senior Member of the section of the Commission dealing with Statute Law Revision who formulated a scheme for the revision of the Act. The principles underlying the scheme were discussed at a meeting of the second section held on the 11th February 1956. A draft Report prepared in the light of the discussion was circulated to all the Members of the Commission and their views invited thereon. These views with the draft Report were discussed at meetings of the Statute Revision Section held on the 11th March 1956 and the 14th April 1956. Important suggestions made by Members at these meetings were accepted and certain questions were referred to the Committee for further consideration. The Report was again discussed at a meeting of the Statute Revision Section held on the 12th May 1956 and it was left to the Chairman and Sri Satyanarayana Rao to finally settle the Report in the light of the discussion.

4. Dr. N. C. Sen Gupta while signing the Report has added a separate note on two points on which he has taken a view different from that in the Report. Sri S. M. Sikri being outside India is unable to sign the Report but he concurs in its recommendations.

Yours sincerely,
M. C. Setalvad.

REPORT OF THE LAW COMMISSION ON THE LIMITATION ACT

PART I—PRELIMINARY

CHAPTER I—INTRODUCTION

Limitation and its utility.

The utility of a statute of limitation has never been a matter of serious doubt or dispute. It has been said that the statute of limitation is a statute of repose, peace and justice. It is one of repose because it extinguishes stale demands and quiets title; in the words of John Voet, controversies are restricted to a fixed period of time lest they should become immortal while men are mortal. It secures peace as it ensures security of rights; and it secures justice, as by lapse of time evidence in support of rights may have been destroyed. There can thus be no doubt that it rests on sound policy[1]. The operation of the law of prescription has been explained by Lord Plunket in a striking metaphor. He stated that Time holds in one hand a scythe and in the other, an hour-glass. The scythe mows down the evidence of our rights, while the hour-glass measures the period which renders that evidence superfluous. Commenting on this, a learned author observes that the metaphor could have been completed by adding, so far as India is concerned, that the frame-work of the hour-glass would certainly decay, the glass be broken, and the sand escape.

History.

2. Under the Hindu jurisprudence there was only a law of prescription and no Law of Limitation as such. For the acquisition of title by prescription, a period of 20 years was laid down by certain *Smriti* writers, though others differed regarding the length of the period. The main occupation of the people being agriculture and there being very little of commerce or trade, concentration was more on the land and the rights therein. This was the position not only in Hindu society but also in other countries; thus in England, before the James Statute of 1623 there was no specific law of Limitation.

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(1) For an elucidation of the policy underlying the law of limitation, see Jones *v.* Bellegrove Properties Ltd., [1949 (2) K.B. 700) and R.B. Policies at Loyd's *v.* Butler (1950) 1 K. B. 76.]

3. Before 1858, two systems of law of Limitation were administered by the courts in India. In the territories within the original jurisdiction of the courts established by Royal Charter in the Presidency towns of Calcutta, Madras and Bombay, the English Law, and in the mofussil courts, the law as laid down by the Regulations, was administered. The first attempt to introduce a uniform law of Limitation applicable alike to courts established by Royal Charter and other courts was made by the Limitation Act, 1859 (XIV of 1859) which came into operation in 1862. It was followed by Act IX of 1871, which amended the law laid down by the former Act on the basis of the decisions of the courts. The Act of 1871 was soon replaced by Act XV of 1877 which introduced some alterations. There were other amending Acts which followed the Act of 1877. Finally, as a result of the decision of the Privy Council in *Vasudeva* v. *Srinivasa*[1] on the applicability of article 132 to suits on mortgages for sale (over-ruling the earlier decisions which applied article 147, the question of consolidating and amending the law relating to Limitation for suits, appeals and applications was taken up and this resulted in the passing of the Limitation Act of 1908 (Act IX of 1908). This Act was also amended from time to time particularly after the report of the Civil Justice Committee of 1924-25. This is the Act now in force. It applies to Part A and Part C, as well as to Part B States, subject to the modifications made by Act III of 1951.

Analysis of the Act 1908.

4. The Act of 1908 consists of 30 sections and 183 articles. The sections deal with general principles applicable to extension of time whether by reason of disability or by acknowledgement and part payment, and they are divided into five parts. Part I is preliminary, Part II (sections 3 to 11) deals with limitation of suits, appeals and applications, Part III (sections 12 to 25) deals with computation of period of limitation, Part IV (sections 26 to 28) deals with acquisition of ownership by possession and Part V (sections 29 and 30) contains saving provisions. Of the 183 articles, articles 1 to 149 relate to suits (the first division), articles 150 to 157 relate to appeals, (second division) and articles 158 to 183 relate to applications, (third division). The articles relating to suits are divided into 10 parts on the basis of the periods of limitation and not on the nature of suits. The periods range from 30

(1) 30. Mad. 426.

days to 60 years. For appeals there are 6 periods ranging from 7 days to 6 months. For applications there are 9 periods ranging from 10 days to 12 years.

Need for reform.

5. The need for reform of the Law of Limitation in India has been felt for quite a long time. One of the questions formulated by the Civil Justice Committee of 1925 was, "In what cases do you consider that the Law of Limitation might be made more stringent?" and in response to this, a number of suggestions were made for the deletion or amendment of various sections and articles of the Limitation Act. As, however, the revision of the Act involved more labour than that Committee could bestow, in its report it confined its observations to a few articles. In a note appended to that report Sir Tej Bahadur Sapru particularly adverted to the fact that the seemingly innocuous provision in Article 182 of the Limitation Act providing limitation for the execution of decrees afforded a standing temptation to dishonest decree-holders and dishonest judgment-debtors to trouble, annoy and cheat each other and to prolong the execution at their will and pleasure. He also drew the attention of the Committee to the fact that the commentary in Rustamji's edition of the Limitation Act on that Article covered 75 closely printed pages. (In the fifth edition it covers nearly 200 pages). The provision of different articles for different categories of suits and a residuary article providing a longer period of limitation is responsible for conflicting decisions and the attempt of the plaintiff has always been to bring his suit, if possible, within the article providing a longer period of limitation while the defendant attempted the opposite. It cannot be gainsaid that the law should be simple and certain. The time of the courts should not be wasted in disputes concerning the shadow and not the substance. As far as possible, legislation should avoid the possibility of conflict between various articles and not allow the residuary article to confer any additional advantage. It is desirable that people should not be exposed to the risk of "stale demands" after they have lost all evidence—documentary or oral—in support of their claims. The nearer the action to the ken of events, the easier it is to discover the truth. The periods of limitation should neither be too long nor too short. It should also accord as far as possible with the notions of a layman, such as, that for recovery of land the period is twelve years and for other cases three years.

The English Limitation Act, 1939.

6. In England, the Law Revision Committee appointed in 1934 submitted its Fifth Interim Report suggesting the lines on which the various Statutes of Limitation in England should be consolidated and amended. As a result of these recommendations the Limitation Act, 1939, was enacted. The law in England has been codified in 34 sections without any schedules. Actions are classified according to their nature and limitation is prescribed on that basis. For common law actions founded on contract or tort a uniform period of 6 years has been provided. Actions to enforce recognisances, actions to enforce an award, where the submission is not by an instrument under seal, actions to recover any sum recoverable by virtue of any enactment other than a penalty or forfeiture or any sum by way of penalty or forfeiture are also governed by the same period of limitation. For actions for account and actions on a speciality, periods of 6 years and 12 years respectively have been provided. For actions relating to the recovery of land as well as for actions for the recovery of money charged on land, a period of 12 years is provided. Separate provision has been made for actions relating to trust, and actions against public authorities. A special period of 30 years is provided for actions by or on behalf of the Crown. The Act then deals with the extension of periods of limitation in cases of disability, acknowledgment, part payment, fraud and mistake. It has not adopted the scheme of further dividing actions founded on contract or on tort as under the Indian Limitation Act. The period is made to run in each of these cases from the date when the cause of action accrues. The scheme adopted under the English Act is, therefore, simple and does not give much room for conflict of judicial opinion.

7. We proceed to examine the provisions of our Limitation Act with a view to see in what manner it can be simplified and modernised in the light of judicial decisions which have brought to light difficulties and doubts. We do not propose any substantial change in the structure of the Act and would accordingly retain its division, into Sections and Articles.

PART II—SECTIONS

CHAPTER II—PROPOSAL RELATING TO SECTIONS

8. The Sections of the Act deal with certain general principles which are applicable to all suits and

proceedings and control the period of limitation under the articles. In the succeeding paragraphs of this chapter, the Sections are examined. We may, at the outset observe that in our view, the Illustrations are unnecessary and sometimes misleading and we accordingly recommend that they should be deleted wherever they occur.

Section 2—Definitions:

"Application"

9. We recommend that a new definition of the word "application" so as to include any petition, original or otherwise, should be added. The object is to provide a period of limitation for original petitions and applications under special laws as there is no such provision now. Consequential alterations in the definition of the word 'applicant' should also be made.

"Contract"

10. There are numerous articles in the present Act relating not only to contract, as the word is commonly understood, but also to transactions coming under the head of 'implied contracts' and 'quasi-contracts'. One obvious way of simplifying the Act would be to have a comprehensive definition of the word 'contract' for the purposes of this Act and to make a single provision for all suits based on contract. The question is how to frame a suitable definition of the word 'contract'. For this purpose, it is necessary to digress a little into the field of the law of contract, to help us to realise the correct implication of the words 'contract', 'implied contract' and 'quasi-contract' (all of which we propose to bring under one definition for the purposes of the Limitation Act). It is also necessary to trace the development of this branch of law in England, as ideas based on English Common law were imported into many of our early statutes.

11. In England, the development of the law of contracts was peculiar due to historical reasons. The common law courts paid more regard to the form of action than to its nature. The action of *indebitatus assumpsit* was the foundation of the development of this branch of the law. Apart from obligations *ex delictu* and *ex contractu*, certain relationships between parties giving rise to obligations (such as actions for money had and received) came to be treated as if they had a contractual origin. With the dichotomy of actions into contracts and torts in the 19th

century, obligations of this kind were treated as quasi-contracts. Some text-book writers have classified quasi-contracts under various heads. Chitty includes the following under this head:—

(1) action on judgments, English and foreign,

(2) action for money paid by the plaintiff at the request of the defendant,

(3) action for payment by sureties,

(4) action for contribution between joint-contractors,

(5) action for money had and received (which is treated as based on implied contract) including money in the hands of a stakeholder,

(6) action for recovery of consideration when it has failed,

(7) action for money paid by mistake,

(8) action for money obtained by fraud or extortion,

(9) action for money paid under an illegal contract,

(10) action for money paid under a void judgment.

Prof. Winfield defines a quasi-contract as follows:—

"The liability not exclusively referable to any other head of the law imposed upon a particular person to pay money to another particular person on the ground that non-payment of it would confer on the former an unjust benefit."

He classifies quasi-contracts, under four heads:

(1) pseudo quasi-contracts,

(2) pure quasi-contracts,

(3) quasi-contracts alternative to some other form of liability, and,

(4) doubtful quasi-contracts.

On the other hand, Cheshire adopts only a two-fold classification:

(1) genuine quasi-contracts, and

(2) doubtful quasi-contracts.

Under the former are included actions for money paid by the plaintiff to the defendants, actions for money paid under a mistake of fact, actions for money paid in pursuance of an ineffective contract and claims on *quantum meruit*. Under the latter, actions on judgment-debts, on money due under statute by law or custom, and claims for

necessaries supplied to persons under incapacity are included. From this classification it would be seen that various kinds of actions are included under quasi-contracts. The law was developed from the observations of Lord Mansfield in *Moses* v. *Macferlan*[1]. In the decision in *Sinclair* v. *Brougham*[2] Lord Sumner observed that the action for money had and received was founded on an implied contract (its origin was in the writ of *assumpsit*) and that it should therefore, be classified as a contractual action. This view evoked severe criticism in academic and judicial circles. In the recent pronouncement in *Re Diplock*[3] the view of Wynn-Parry J., in the court of first instance, that the action for money had and received is a common law action on the case founded on an implied promise to pay, was accepted by the Court of Appeal though it reversed the judgment on other grounds. In the House of Lords, the decision of the case turned on another point (*Minister of Health* v. *Simson*).[4] In the *Fibrosa* case[5] Lord Wright thought that the legal basis for an action under quasi-contract was restitution. He said:

> "It is clear that any civilised system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit *i.e.* to prevent a man from retaining money or some benefit derived from another which it is against conscience that he should keep. Such remedies in English law are generically different from remedies in contract or in tort and are now recognised to fall within the third category of common law, which has been called quasi-contract or restitution."

He dismissed the observations of Lord Sumner in *Sinclair's case* as *obiter dicta*. In *United Australia* v. *Barclays Bank*[6], Lord Atkin pointed out that the action was based upon fictitious contract and characterised the fiction as obviously fanciful in these words:

> "These fantastic resemblances of contracts invented in order to meet requirements of the law as to forms of action which have now disappeared should not in

(1) (1760) 2. Burrow, 1005.
(2) (1914) A. C. 398.
(3) (1948) Ch. D. 465.
(4) (1951) A. C. 251.
(5) (1943) A. C. 32, 61.
(6) (1941) A. C. p. 1. at p. 29.

these days be allowed to affect actual rights. When these ghosts of the past stand in the path of justice clanking their medieval chains, the proper course for the judge is to pass through them undeterred."

Notwithstanding these strong observations by two eminent judges, it cannot be said that the English courts have accepted the principle of unjust benefit as the basis of English quasi-contract. Lord Porter stated[1] that though the law of unjust enrichment occupies a permanent place in the law of Scotland and in the United States, it formed no part of the law of England and that the doctrine of restitution so described would be too widely stated. Under English law it has not yet been accepted that the true basis for quasi-contracts and actions for money had and received is the doctrine of restitution on the basis of unjust enrichment. Denning L. J., in a recent book "The Changing Law" (at pp. 62-63) has stated that the decision of Lord Porter does not rule out the law of restitution though it excludes the law of unjust enrichment. According to his view the law of restitution covers those cases "which cannot be brought within the scope of contract or tort but in which nevertheless the plaintiff can recover money under the money counts or under some positive rule of law such as that applied in the *Cairo case* or even under the rules of equity as in the case of Customers of Birkbeck Bank." (pp. 66-67). He advocates the recognition of a third category of the common law distinct from contract and tort to be called "restitution". The underlying principle of the law of restitution is that no one should unjustly enrich himself at the expense of his neighbour. It may be said, as was felt by Denning L. J., that the conception is too indefinite to be stated as a principle of law. Yet he observes, at p. 65:

"It sufficiently indicates a new category. Just as the conception of contract is enforcement of promises, and the conception of tort is damages for prevention of unjust enrichment. Once this category comes to be accepted into the law, the all remedies into the straight jacket of contract and tort but will be able to develop a comprehensive category with its own distinct principles" (p. 65).

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(1) (1951) A. C. 512.

12. In India, the law of contract is to a large extent governed by statute. Where there is provision in the Contract Act, the Court will not apply common law, as for example the doctrine of frustration, in view of Section 56 (vide *Satyabrata Ghosh* v. *Mangneeram*[1]). The Act, however, is not exhaustive and does not purport to embody all the principles of the law relating to contract including relations resembling those created by contract. It is no doubt true that in Chapter V section 68 to 72, the principles of the common law which are described as quasi-contracts or implied contracts are enacted. But even there the Act does not cover all the principles which form part of the substantive law of contracts. Thus, the legal basis of an action for money had and received for which a period of limitation is prescribed by article 62 of the Limitation Act is nowhere to be found in the statute book. Courts in India have, however, applied the principles of that action to situations arising in India. It will be necessary when dealing with the law of Contracts to bring into the ambit of the Act of all such principles of English law as have been extended to India on the principle of justice, equity and good conscience, but have not been embodied in the Act. In order to simplify the law and to avoid labels adopted in England which have given rise to conflicting decisions, we may embody in the Contract Act the principles which should apply to India having regard to the doctrine of restitution adumbrated by Denning L. J. The law must progress and should not remain stagnant. The doctrine of unjust enrichment has been applied in other countries and justice requires that a man should not unjustly benefit himself at the expense of another. To what extent the doctrine of unjust enrichment should be adopted in the Contract Act will have to be considered. The principle underlying Section 68 to 72 of the Contract Act would be the same whether the claim be described as being for reimbursement or for restoration or for contribution or for restitution.

13. The expression "implied contract" is used in two different senses. Section 9 of the Contract Act draws a distinction between express and implied promises. If the proposal or acceptance of promise is made in words, the contract is express. If such a proposal or acceptance

(1) (1954) S. C. R. 310.

is made otherwise than in words, it is an implied contract. This is the strict and orthodox meaning of "implied contract". But the expression is also used in a wider sense to include legal relations in which the essential element of a contract is lacking. As observed by Lindley L. J., in *Re Rhodes*[1] the expression "implied contract" has been used to denote not only a genuine contract established by inference but also an obligation which does not arise from any real contract but which can be enforced as if it has a contractual origin. Some obligations which are labelled as quasi-contracts under English law will come under the second category of implied contracts in the wider sense. They are not strictly contracts as the obligations do not arise from the consensus of the parties.

14. So far as the Limitation Act is concerned, we may adopt an extended definition of the word "contract", to include in its ambit all implied contracts and quasi-contracts, *i.e.*, not only implied contracts which are consensual and would be contracts under the Contract Act but also all such obligations which the law imposes or imputes having regard to the relationship between the parties and the circumstances of the case in order to prevent one party from retaining an unjust benefit and to force him to return such benefit by way of restitution. This would help in the consolidation of numerous articles and thereby in the simplification of the Limitation Act.

"Plaintiff" & "Defendant."

15. The definitions of "plaintiff" and "defendant" as they stand in the Act include a person from or through whom a plaintiff or defendant derives his right or liability to sue or to be sued. The object of this inclusive definition is to make it clear that the cause of action for a person in whom the right to sue is vested and the person on whom the right has subsequently devolved is one and the same. The position holds goods in the case of executors, administrators and representatives also and we think it necessary that the definitions should be enlarged so as to include not only a person from whom the plaintiff derives his title but also a person whose estate is represented by an executor, administrator or other representative.

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(1) (1890) 44 Ch. D. 94 at p. 107.

16. The applicability of article 144 of the Limitation Act may be taken to illustrate the need for this. The third column of that article states that the time begins to run "when the possession of the defendant becomes adverse to the plaintiff". If the "plaintiff" therein referred to is the person to whom the right to sue had accrued and who in fact files a suit for recovery of possession, there will not be any difficulty. But if the plaintiff who institutes the suit is the person on whom the right to sue devolved, the adverse possession of the defendant against the predecessor of the actual plaintiff would be of no avail and time would run only from the moment when the actual plaintiff derived his title. The object of the definition of "plaintiff" in the Limitation Act, as it is now, is to resolve this difficulty by making it clear that the cause of action for both is the same and the date of its accrual is the date when the defendant's possession became adverse against the original owner. A similar situation may also arise in the case of executors, administrators or other representatives. Perhaps this was not noticed at the time when the present Act was passed.

17. Under section 306 of the Succession Act many causes of action survive to the executors etc., and in respect of all those causes of action the executors etc. are in the same position as derivative title holders though they are not treated as such.

18. The Courts have gone to the length of holding that if a father to whom the right to sue had accrued gave notice under section 80 C.P.C. and died before filing the suit and the suit was actually instituted by the son, there should be a further notice by the son as the section contemplated notice by the actual plaintiff and not the person who had the right of suit. (See *Mahadeva Dattatreya Rajarishi* v. *Secretary of State*).[1] In the absence of a clear definition a similar interpretation might be placed on the word "plaintiff" in the Limitation Act when any executor, etc. happens to institute proceedings. To cover this lacuna we propose an extended definition. The same reasoning would apply to the definitions of "defendant" and "applicant" and they too should be amplified as stated in paragraph 15.

(1) A. I. R. 1930 Bom. 367 (1).

19. The executor, administrator or other representative has an independent right of suit and is under an independent liability in cases arising under the Legal Representatives Suits Act, 1855 and the Fatal Accidents Act. These stand on a different footing.

"Tort". 20. There should be a definition of the word 'tort' so as to include within it not only torts strictly so called, but also any breach of statutory duties of care which result in injury and damage to the person or property. The Limitation Act itself draws a distinction between breaches of contract and wrongs independent of contract, *vide* section 23. A definition of 'tort' so as to include all civil wrongs independent of contract may be adopted.

"Promissory Note" "Bill of Exchange" "Bond" and "Easement". 21. The definitions of "promissory note", "Bill of Exchange" and "Bond" need not be retained as we propose to consolidate all articles relating to Contract in one article, as a result of which these words will not find a place in the revised Act. The definition of the word "Easement" may also be dropped if sections 26 and 27 are deleted as proposed by us.

"Period prescribed." 22. The expression "period prescribed" occurring in section 4 has been construed differently by different courts. Some courts take the view that it means only the periods of limitation prescribed in the Schedule to the Act and does not attract the extensions of the periods of limitation under the Sections, which is obviously not correct. As the expression occurs in other sections also, it would be better if a new definition clause for "period prescribed" is inserted to the effect that it means the period of limitation computed in accordance with the provisions of the Act. We recommend accordingly.

Section 3.

23. There is some conflict of decisions between the High Courts as to when exactly time ceases to run in the case of applications by notice of motion. One view is that it stops when the application is filed and the other is that it stops only when the notice of motion is actually taken up by the Court[1]. This controversy may be set at rest, by fixing a definite point of time in this behalf. We think

(1) *In re Gallop* (25 Q.B.D., 230): *Kuttayan* V. *Ellappa* (17 M.L.J.215) and *Venka-ppya* V. *Nazerally* (47 Bom. 764).

that the view more favourable to the applicant should be adopted and, therefore, recommend that the time should cease to run on the date on which the application is properly presented in court. A suitable amendment on those lines may be effected.

24. With regard to a counter-claim and a claim for set-off, difficulty is experienced as to the date on which limitation is to be reckoned. We think that in respect of a claim for set-off which, unlike a counter-claim, arises from the same transaction, it should relate back to the date of institution of the suit. Set-off should include a legal set-off as well as an equitable set-off. This follows the rule under the English Limitation Act, 1939 (*vide* Sec. 28 of that Act). In respect of a counter-claim however, it should be regarded as a separate suit filed on the day on which such claim is made.

Section 4.

25. The Privy Council in *Maqbul Ahmad* v. *Pratap Narayan*[1] settled the law that section 4 does not extend the period of limitation but saves limitation if the suit or appeal or application is filed on the day of the reopening of the court in cases where the limitation expired on a day when the court was closed. The section does not, therefore, require any further change.

Section 5.

26. We are of opinion that instead of leaving it to the different States or the High Courts to extend the application of section 5 to applications other than those enumerated in the section, a uniform rule should be adopted applying it to all applications except those arising under order XXI of the Code of Civil Procedure relating to execution. In the case of special or local laws, it would be open to such laws to provide that section 5 will not be applicable.

Sections 6 and 7.

27. There is a difference of opinion between the Madras and the other High Courts regarding the interpretation of section 6 of the Act. The question arose under section 7 of the old Act which corresponds to the present section 6. In the Madras High Court the view taken by Justice Bhash-

(1) 57 All. 242.

yam Ayyangar in *Ahinsa Bibi* v. *Abdul*[1] approved by the Full Bench in *Periasamy* v. *Krishna Ayyan*[2] was that in view of the definition in the General Clauses Act, the word "person" includes a plurality of persons. Accordingly, where a right is vested jointly in a plurality of persons, the protection given by this section extends only to cases in which each of the persons, jointly entitled to sue or to apply for execution, is affected by disability at the time from which limitation has to be reckoned; if any of them is then free from disability, section 6 is inapplicable. But the other High Courts were of the view that the section applied irrespective of the question whether all or one or some of the several joint-creditors or claimants were under disability. In view of the present section 7 (which was amended subsequent to the said decision) whatever may be the interpretation of section 6, and whether the one view or the other is correct, if one of several persons is able to give a valid discharge without the concurrence of the person under disability, time runs against them all. If, on the other hand, no such discharge can be given, time will not run against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased. In view of this section, in the case of persons jointly entitled to institute a suit or make an application for the execution of a decree, all persons whether major or minor will get the benefit of the extended period of limitation so long as any one of them is a minor and so long as there is none capable of giving a discharge without the concurrence of the other. But that is the result of substantive law under which one person cannot give a discharge on behalf of others unless he is an executor or a partner duly authorised or the manager of a Mitakshara joint Hindu family. The Madras High Court has taken the view in *Annapurnamma* v. *Akkayya* (F.B.)[3] that one joint creditor could give a valid discharge so as to bind the others, basing the argument on section 38 of the Contract Act. But this view has not been accepted by any of the other High Courts and we think that the view taken by the other High Courts is correct; in this connection, the Contract Act may be suitably amended. There is no need to alter section 6 for this purpose.

(1) 25 Mad. 26.
(2) 25 Mad. 43.
(3) 36 Mad. 544 (F.B.).

28. Sub-section 4 of section 6 requires clarification. For the words: "at the date of death affected by any such disability", the words "at the date of the death of the person whom he represents" should be substituted, as otherwise the death of the first mentioned person under disability might be taken as the starting point, which will be meaningless.

29. There is a conflict of decisions on the question whether when a person under a disability dies, after the disability ceases, but within the time allowed to him by law to institute a suit, his legal representative can take advantage of the extended period to the same extent as in the case where the disability of a person continues up to his death. The denial of the benefit to the representative is inequitable and should be rectified by a suitable amendment of section 6.

30. The use of the word "discharge" in section 7 has given room for the agrument that the section applies only to money claims such as debts, but does not extend to other rights such as the right to bring a suit impugning an alienation. All the courts, however, have adopted a liberal interpretation of the word as including not only money claims but also other rights of the plaintiffs including rights in immovable property. To make the position clear we suggest that an Explanation giving effect to the liberal interpretation may be added as Explanation (1) to section 7.

31. In this connection, a reference is necessary to an apparent conflict of decisions on the scope of section 7. One line of cases[1] held that a suit brought by two brothers of an undivided Mitakshara family to set aside an alienation by their guardian, filed more than three years after the elder brother attained majority but within three years of the date of the younger brother attaining majority was barred. The other line applied the decision of the Privy Council in *Jawahir Singh's* case[2] wherein it was held that the right of the younger son to challenge an alienation of the father was not extinguished by the omission of the elder brother to file the suit within the period prescribed for him. If the cases are examined with reference to their facts, it will be found that there is really no conflict bet-

(1) Starting from 38 Mad. 118 (*Doraisami* v. *Nondisami*).
(2) 13 All. 152.

ween them. In the second line of cases, the father was alive and was a party defendant in the suit and hence the elder brother though a major was not in law the manager and could not give a valid discharge even with the concurrence of the other members. In the former line of cases, on the other hand, the father was not in existence and the elder brother was the manager capable of giving a valid discharge. The correct position, therefore, is that if there is a manager capable of giving a discharge and if he does not institute a suit within the time allowed by law, the suit by the minor members though instituted within three years of their attaining majority will be barred.

32. After the decision of the Privy Council in *Jawahir Singh's* case, controversy became acute also on the question whether in the case of a manager of a Hindu joint family, it was necessary to establish that the person capable of giving discharge as manager was not only the *de jure* but also a *de facto* manager. There was also a further question whether to establish that a person was a *de facto* manager, it was sufficient to prove one act of management or more than one act of management and whether it was necessary that there should be property of the family other than the alienated property. One view is that unless it is established that a *de jure* manager had also acted as a manager, *i.e.*, was a *de facto* manager, he is not a person capable of giving a discharge (e.g. *Ganga Dayal* v. *Mani Ram*).[1] The other line of cases would make it a matter of presumption that a *de jure* manager has also acted as a *de facto* manager (*Baktavatsalu* v. *Rao.*)[2] In our opinion the former view is the better one, for the reasons given below.

33. The "managership" under the Hindu law is a creation of law and devolves according to settled rules. The power and the capacity to give a valid discharge so as to bind other members of the family are conferred upon the manager for the reason that he is in possession of the property of the family and represents the family in all transactions relating to it. He can incur debts for the necessities of the family, discharge and realise debts and receive the income of the family properties. This is so because he is in possession of the property and is not

(1) 31 All. 156; approved in 48 All. 152 P.C (*ibid*)
(2) I.L.R. (1940) Mad. 752.

merely an agent created by law so as to bind the others by giving a discharge in respect of debts either actually or notionally. It seems to us, therefore, that to clothe a *de jure* manager with power to give a valid discharge so as to bind others when he is not in possession of any property of the family or when the family does not possess any property will be to jeopardise the interests of the other members of the family. If he collects the debts and walks away with the money the other members may have no remedy against him if he has no property. The idea underlying sections 6, 7 and 8 is to protect the minor and not to place him under a disadvantage. We, therefore, think that an Explanation should be added making it clear that the authority of a manager of a joint Hindu family to give a valid discharge can be inferred only when he is both a *de jure* and a *de facto* manager. It would not be wise to define the circumstances from which a *de facto* managership can be inferred. The question must be left to the decision of the courts having regard to the facts and circumstances of each case.

Sections 8, 9, *and* 11.

34. Sections 8, 9 and 11 do not, in our opinion, require any alteration.

Section 10.

35. The word "express" in the marginal note may be omitted, as the section includes transactions which, though not express trusts, are deemed to be trusts for a specific purpose.

Section 12.

36. It is not possible to prefer an application for leave to appeal unless the appellant or the applicant has a copy of the judgment on which the decree is based. As a matter of practice some courts are allowing the time taken for obtaining a copy of the judgment in such cases to be excluded under section 12 as "time requisite". This practice may be legalised by introducing suitable additions to section 12.

37. Some courts have taken the view that the delay in drafting the decree before an application for a copy is made should be deducted as "time requisite". But we

think that a delay of the office *before* the application for a copy is made should not count in favour of the party. A suitable provision should be added to make this clear.

38. In this connection our attention has been drawn to a practice obtaining on the Original Side of the Calcutta High Court relating to the drafting of decrees and orders. The decree is not drawn up by the officer of the court as a matter of course; the party, has to make an application for a 'completing order' and after an elaborate procedure the decree is drawn up and only thereafter can a party apply for a copy of it. It has been suggested to us that to avoid hardship to the litigants in such cases, the time taken for drafting a decree should also be excluded in computing the period of limitation. We have given careful consideration to this suggestion and we are not convinced of the need to make any special provision in this respect. The difficulty being due to rules peculiar to the Original Side of the Calcutta High Court, the appropriate course would be to alter the relevant rules. We refer in this connection to the recommendation made in the Report of the Judicial Reforms Committee for the State of West Bengal presided over by Harries, C. J. of the Calcutta High Court. It states: "there are serious defects in the present procedure of the Original Side. England has largely remedied these defects, but here they still remain. For example, the procedure for settling decrees and orders followed on the Original Side is cumbersome to a degree and frequently the cause of large delay and unnecessary expense." We endorse this view and we do not know why this recommendation has not been implemented. We hope that the necessary changes would be made in the Original Side rules of the Calcutta High Court, to save the litigants from the hardship pointed out.

39. As we have provided a period of limitation for revision applications also, Sub-sec. (1) should be amended suitably.

Section 13.

40. Sec. 13 does not, in our opinion, require any alteration.

Section 14.

41. The Rankin Committee suggested that, following the language of sec. 11 of the C.P. Code, in sec. 14, for the words

"cause of action" the words "matter in issue" may be substituted. The words "cause of action" have the effect of making the relief too narrow and adequate relief would be available if, as suggested by the Civil Justice Committee, the words "matter in issue" are substituted for the words "cause of action". We are also of the view that prior proceedings in a court of Revision should be brought within the scope of this section. We recommend amendments to section 14 to give effect to these suggestions.

42. The view has been taken that Order 23 Rule 1(2) of C.P.C. supersedes this section even in cases where the grounds of withdrawal are identical with the grounds under section 14 on which a suit or application could not be entertained by a court. If the withdrawal is based on grounds not covered by section 14, the plaintiff should not be allowed to take advantage of the exclusion of time under section 14. But there is no reason to deny him that right when the grounds of withdrawal are those contemplated by that section. To avoid this hardship, it is necessary to introduce a suitable amendment in section 14 to the effect that if a suit or application is withdrawn on grounds similar to those specified in that section, the litigant should be allowed to exclude the time spent in prosecuting such proceedings. Rule 2 of Order XXIII C.P.C. should not apply in such cases.

43. A suggestion was made that a further explanation to section 14 should be added extending the scope of the expression "other cause of a like nature" so as to bring within its ambit cases where the High Court exercising its jurisdiction under article 226 of the Constitution rejects a petition in the exercise of its discretion on the ground that the applicant has an alternative remedy by way of suit. The object of section 14 is to give relief to a person who institutes proceedings which by reason of some technical defect are thrown out. If a party knowing that he has a remedy by way of suit which has to be instituted within the period of limitation waits till the last moment and considers it better or more convenient to have resort to a cheaper remedy by invoking the jurisdiction of the High Court under article 226 of the Constitution and the Court dismisses the application on the ground that the party has another remedy, such rejection should not be treated as a technical defect by reason of which the application could not obtain the relief he wanted. He elects between two remedies and the Court

rejects the application on the ground that the appropriate remedy was by way of suit. There may be cases of suits or other proceedings in which similar situations might arise. Thus the supposed hardship is confined to an application under article 226 of the Constitution. To accept this suggestion would be to extend the policy underlying the section to cases not contemplated by it. The ground suggested cannot be regarded as a "cause of a like nature".

Section 15.

44. Sub-sec. (2) of Sec. 15 provides for the exclusion of periods of statutory notices, such as those under sec. 80 of C.P.C. In this connection we may refer to the provisions of sec. 86 and 87 of the same Code requiring that in respect of suits against foreign rulers, ambassadors and envoys, the consent of the Central Government should be obtained before filing the suit. Generally, it takes a long time for such consent to be given and the principle behind the existing provision for exclusion of the period of notice under section 80 C.P.C. should logically apply to such cases also. We recommend that the time requisite for abtaining such order should be excluded.

45. It is common knowledge that by the time a receiver or liquidator is appointed in insolvency or liquidation proceedings and the receiver or liquidator after getting information about the assets and liabilities of the estate settles down to the task of realising the assets of the estate, claims in favour of such estate or company get barred to the deteriment of the persons entitled to the benefit of the assets. To avoid this hardship, we think it just that in respect of suits on behalf of an insolvent or a company in liquidation the period between the date of the filing of the petition for adjudication or winding up and the appointment of the receiver or liquidator, and a period of three months thereafter (to enable him to acquaint himself with the affairs of the estate) should be excluded in computing the period of limitation for suits by or on behalf of an insolvent's estate or the company. The benefit of this provision should also ensure to any interim receiver or provisional liquidator.

Section 16.

46. It was held in *B. K. Roy* v. *Ashutosh*[1] that the exclusion of time under this section would not apply to suits governed by article 144. We have now proposed that the scope of article 144 be enlarged so as to include matters covered by articles 137 and 138. The exclusion of time contemplated by this section should apply to all such suits by an auction-purchaser.

Section 17

47. Section 17 is confined to rights of action accruing after death. There is no reason to restrict the section in this manner. The Privy Council observed in *Meyyappa* v. *Subramanya*[2] that when the cause of action arises in favour of the deceased person after his death time will at once begin to run. Some courts have applied the section to cases where the right accrues *on death, as* in the case of partnerships. Section 17 should be made applicable to rights of action accruing on death or thereafter.

Section 18.

48. We think that this section should be recast so as to include actions based on fraud and also for relief founded on mistake. In this respect, section 26 of the English Act is more suitable and that section may be adopted with suitable alterations. The existing provision relating to concealment of documents should be retained and the protection in favour of *bona fide* purchasers for valuable considerations should also be extended to those cases.

49. As we are recommending the incorporation of section 48 C.P.C. in this Act the principle contained in the proviso to that section in regard to the power of courts to order execution after the period of limitation will have to be preserved. We however consider that the benefit of this provision should be available only if the application is filed within one year from the date of discovery of the fraud.

Sections 19 *and* 20.

50. The Civil Justice Committee expressed the view that clause 2 of section 19 is a fruitful source of false pleas and that the date is so essential a part of the acknowledgement itself that unless it is in writing like the rest of the acknowledgment it should not operate to save the bar of

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(1) 26 C. W. N. 364.

(2) 20, C.W N. 833 (P.C.)

limitation. They therefore suggested an amendment to that effect to Section 19. We do not think that this is necessary. In England, oral evidence is admissible to prove the date and this was recognised in *Edmunds* v. *Downes*[1], and *Jayne* v. *Hughes*[2]. Oral evidence was admitted even to show that the document was executed after the date which it bore. No alteration of the law was effected in England by the Limitation Act of 1939. If all the terms of a document are already in writing and if the date is missing it would be unjust and inequitable to deprive a party of the benefit of relying upon the document as constituting an acknowledgment by adducing evidence regarding the date or the document and thus supplying the omission.

51. The question whether an acknowledgment made after a transfer would bind a transferee has been considered by several High Courts and there have been conflicting decisions. It was, however, finally decided by the Privy Council in *Bank of Upper India* v. *Robert Herecus*[3] that an acknowledgment made by the mortgagor to the mortgagee after parting with his interest does not bind the transferee. One would have thought that the language of section 19 is clear and does not give room for any divergence of opinion, for it requires that the acknowledgment of liability in respect of property or a right should be made in writing signed by the *party against* whom such property or right is claimed. If, therefore, the right is claimed against A, it has to be established that there was an acknowledgment by him but that acknowledgment should not be availed of against B for there was no acknowledgment by him. The law as settled by the Privy Council is in consonance with the language of the section. We do not think that any alteration is necessary. Part payment under section 20, however, stands on a different footing, as the section states that if there is a payment by the person liable to pay the debt, the period of limitation should be counted from the time when the payment was made but it does not state that such part payment should be taken into account against the payer only. It saves the

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(1) (1854) 2 Cr. & M. 454.

(2) (1854) 10 Exch. 430. See also *Morrell* v. *Studd & Willingdon* (1915) 2 Ch. 643 at 658 Norton on Deeds (Second Edition, pages 190, 191); Halsbury's Laws of England, 3rd Edition, Vol. 11, Page 403.

(3) I.L.R. (1942) All. 660.

limitation against all persons for the debt, liability or right. This was pointed out by the Madras High Court in *Thayyanayaki* v. *Sundarappa*[1] where the question was whether a part-payment by a mortgagor who sold his equity of redemption but was liable on his personal covenant could give a fresh starting of time against the purchaser of the equity of redemption. The answer was in the affirmative and in support of that view the decision of the privy Council in *Lewin* v. *Wilson*[2] was relied on. No alterations in section 19 and 20 are required in this respect.

52. Sections 19 and 20 apply to execution applications also, as has been made clear in the Explanations to those sections. We recommend the deletion of Articles 182 and 183 and the substitution of the provisions of Section 48 of C.P.C. As it is our intention that the time limit of 12 years laid down by that Section should be absolute subject to the exception therein, we are of the view that there should be no scope for extension of time by acknowledgments and part payments, in respect of execution applications. Sections 19 and 20 should be amended suitably.

Section 21.

53. Section 21 was amended in 1927 as a result of the report of the Civil Justice Committee and does not require any further change.

Section 22.

54. We consider that an omission to implead a person owing to a *bona fide* mistake should not deprive the plaintiff of his rights against that person. Relaxation of the law of limitation providing for such mistakes in good faith have been recognised in Section 14 and elsewhere. Section 22 should be amended to exclude from its operation cases where due to inadvertence and in good faith there has been non-joinder of parties.

Sections 23, 24, *and* 25.

55. These do not in our opinion require any alteration.

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(2)(1) I. L.R. 1942 Mad. 508.
11 A. C. 630.

Sections 26 and 27.

56. These sections apply to States to which the Easements Act has not been extended, *i.e.*, to States other than Andhra, Madras, Bombay, Madhya Pradesh, Coorg, Delhi and Uttar Pradesh. We consider that uniformity should be secured by extending the Easements Act to the whole of India. If this is done there would be no need to retain sections 26 and 27 of the Limitation Act. We recommend accordingly.

Section 28.

57. Section 28 deals with the extinguishment of rights and it applies to all property immovable and movable, unlike in England where the rule of prescription applies only to immovable property. The section requires no change.

Section 29.

58. Section 29(1) provides that Section 25 of the Contract Act which permits a barred debt to be regarded as vaild consideration for a contract, is not affected by the Limitation Act. This may be retained.

59. The combined operation of sub-clauses (a) and (b) of sub-section 2 is that so far as special and local laws are concerned, only sections 4, 9 to 18 and 22 of the Act apply and that too subject to such modifications as may be prescribed. We consider that there is no need for this restriction and that the principles contained in sections 4 to 25 should be made applicable to all special and local laws, leaving it open to the legislature to exclude the application of any or all of these sections, in any given case.

60. Sub-section (3) makes this Act inapplicable to suits under the Divorce Act, 1869. There are other Acts like the Parsi Marriage and Divorce Act and the Special Marriage Act, dealing with marriage and divorce. The reasons for excluding proceedings under the Divorce Act 1869 are, equally applicable to proceedings under these other Acts. We recommend that the sub-section may be amplified to include all Acts relating to matrimonial causes. The Acts to be included may be specified when drafting the amend ment to the section.

61. Sub-section (4) of this section would become unnecessary and may be deleted if, as we recommend, sections 26 and 27 are repealed.

Saving Provision.

62. A saving provision has to be made in the new Act to provide for the transitional period. This may be framed on the lines of the similar provision made in 1908, providing a sufficient time for the change over. Appendix I to this report shows the effect of our proposals on the existing periods of limitation for suits, appeals and applications. The period has been reduced (a) from 6 to 3 years, (b) from 12 to 3 years, (c) from 60 to 12 years and (d) from 60 to 30 years. In the case of appeals the period has been made uniform by reducing it in very many cases to 30 days. In the case of applications also the periods have been altered. In cases where the period is increased but the cause of action has already become barred under the existing law the new Act will not have the effect of reviving rights arising out of such causes of action in view of Section 6 of the General Clauses Act. But in cases where the period is reduced it will be inequitable and unjust, if no provision is made to obviate the resulting hardship. The period that should be allowed in such cases is a matter of policy and may be decided by the Government. We have not, therefore, made any suggestion in this behalf, except in the case of suits for redemption in respect of which our proposal is contained in paragraph 129 of this report.

PART III—ARTICLES

CHAPTER III—GENERAL

63. The existence of so many articles in the Limitation Act has undoubtedly made the subject very complex and has also been responsible for conflict of judicial decisions. All this can be avoided, firstly, by classifying the articles on a rational basis and secondly, by prescribing a uniform period of limitation for suits or proceedings of the same nature. It is, of course, not quite easy to classify the articles of the Act in water-tight compartments but a broad categorisation should be attempted if simplification is to be achieved. In the present Act, the articles are grouped according to the periods prescribed. This is neither rational nor convenient. A proper approach would be to adopt the subject-matter as the basis of classification. A perusal of the articles relating to suits reveals that most of them fall under distinct subjects If the articles are group-

ed subjectwise and a uniform period is fixed for suits of the same nature we would have achieved a considerable measure of simplicity. Similarly, as regards articles relating to appeals and applications, it would conduce to simplicity if uniform periods are prescribed as far as possible.

64. Taking as an illustration the articles relating to suits on contract and tort, it will be found that they account for as many as 81 of the 149 articles relating to suits. If, therefore, adopting the English model a single provision is made for all such suits with a period of three years from the date of the accrual of the cause of action, we would be able to eliminate as many as 80 articles. The most important point to consider in this connection is whether the existing entries in column 3 of the first schedule to the Limitation Act, *i.e.*, the dates of the starting point for limitation admit of such treatment. In this connection, it is necessary to bear in mind that the Limitation Act is not a statute which creates a cause of action or confers a right of suit; these are matters which are governed solely by the substantive law. It is not, therefore, permissible in a statute of limitation to provide a starting point for limitation which does not correspond with the date of the accrual of the cause of action under the substantive law. We, therefore, propose that all articles in which the date in column three coincides with the accrual of the cause of action should be grouped together and the date of the accrual of the cause of action be specified as the starting point of limitation. Where, however, the two dates do not coincide, existing article should be retained with such changes as may be necessary.

65. At the outset it is necessary to consider what is meant by the term "cause of action." The principles for determining when the cause of action arises in any particular case of contract or tort have been fairly well settled in England and in India. The expression "cause of action" has been defined by Viscount Dunedin (Vide: *Board of Trade* v. *Cayzer Irvine Co., Ltd.*,[1]) as meaning "that which makes action possible." In the leading case of *Read* v. *Brown*[2] Lord Esher defined it as:

> "Every fact which would be necessary for the plaintiff to prove if traversed in order to support his

(1) (1927) A. C. 610 at 617.
(2) (1888) 22 Q.B.D. 128.

right to the judgment of the court. There must be a plaintiff who can succeed and defendant against whom he can succeed."

(See also *Reeves* v. *Butcher*[1] and *Coburn* v. *College*[2].)

The courts in India have adopted the above definition e.g., *A Brault* v. *Kaul*[3]. It is best to adopt an objection test rather than enact a definition. It must be left to the courts to determine what constitutes the cause of action in each case applying well-established principles to proved facts.

66. A question may be raised whether the removal of the detailed entries in the first schedule of the present Act, is not likely to open up fresh avenues of litigation. It may however be pointed out that under the Code of Civil Procedure the Court is under a duty to determine whether the plaint discloses a cause of action and if so. the place at which such cause of action arose to sustain its jurisdiction to entertain the suit. Further, what constitutes the cause of action for the several categories of suits has already been settled by the substantive law and it will not therefore be difficult for the Court, which has thus necessarily to go into the question of the cause of action, to determine the date of its accrual by applying these settled principles of law. It seems to us, therefore, that the apprehension that the alteration in the law would give rise to new controversies is not justified.

67. We may also refer to one other aspect of the matter which may be raised as an objection to our proposals. In the process of evolving a uniform period of limitation for suits of the same nature, it is necessary to increase the existing periods in some cases. This is inevitable, if a uniform period is to be prescribed for suits of the same nature. As pointed out above, such uniformity will put an end to the ever arising conflicts under the existing law. Further, an increase in the existing period is not likely to work any hardship as it does not prevent the plaintiff from filing a suit on any earlier date if he so desires.

68. The articles in the Act fall under three divisions, *viz.*, (i) Suits (ii) Appeals & (iii) Applications. The

(1) (1891) 2 Q.B.D. 509.
(2) (1897) 1 Q.B.D. 702.
(3) 60 Cal. 918.

articles relating to suits can be grouped under:

I. Suits relating to contract and tort;

II. Suits relating to movable property;

III. Suits relating to trusts and trust property;

IV. Suits relating to immovable property, including—

(a) Suits relating to Mortgages and charges, and

(b) Recovery of possession;

V. Suits based on other claims *i.e.* suits

(a) for accounts,

(b) for declaration,

(c) for setting aside instruments,

(d) for relief on the ground of fraud and mistake;

& VI. Residuary article, providing for suits which do not fall under the above descriptions.

We proceed to examine the articles on the basis of the above classification.

Chapter IV—Suits on contract and tort.

69. In the light of the discussion in the previous chapter, our recommendation is that for all suits on contract and tort the period of limitation should be three years from the date of accrual of the cause of action. In the succeeding paragraphs of this chapter we proceed to examine in what manner the articles of the Limitation Act relating to contract and tort can be grouped. The articles relating to contract including implied contract and quasi-contract are, 7 to 9, 30, 31, 43, 50 to 84, 86, 87, 97, 99 to 102, 107 to 111, 113, 115, 116 and 131.

Arts 7,101 & 102.

70. Article 7 provides a period of one year for recovery of wages of a house-hold servant, artisan or labourer and time starts from the date when the wages accrued due. Along with this article, articles 101 and 102 which provide for seamen's wages and for wages not otherwise expressly provided for may be considered. In the case of seamen's wages the period provided is three years and time runs from the end of the voyage during which the wages are earned. Article 102 is the residuary article for wages providing a period of three years from the date

when the wages accrued due. These three articles relate to suits on contract *i.e.*, contract of service. Under the substantive law, the cause of action for recovery of arrears arises when the *wages accrued due*. Under article 7 which provides a shorter period of limitation, questions have arisen and troubled the courts whether a cook is a household servant, whether a lay man employed to work in a ship or a person employed to assist a salesman in a dealer's shop or a bus conductor is an artisan or labourer, to determine whether the shorter period under Article 7 or the longer period under the residuary article applies. The attempt of the plaintiff is naturally to obtain advantage of the longer period under the residuary article (Art. 102) while the defendant endeavours to get the benefit of the shorter period under article 7. If a uniform period is laid down this conflict can be avoided. The cause of action is the breach and it arises on the date of breach. This is the time from which limitation begins to run. In the case of seamen the cause of action for the recovery of wages does not accrue until the voyage is completed. This was settled long ago in *Hyde* v. *Partridge*[1]. Section 2 (6) of the English Limitation Act of 1939 provides that sub-section 1 of section 2 of that Act should apply to seamen's wages though it is an action enforceable *in rem*. It is treated as an action founded on contract for which a uniform period of limitation of six years is provided. Under the Indian Law, the remedies available for the recovery of a seamen's wages are:—

(1) Under section 63 of the Indian Merchant Shipping Act, 1923, he has a right to recover wages in a summary manner before a magistrate provided the amount claimed does not exceed Rs. 500. He has a lien on the ship for his wages.

(2) When the claim is less than Rs. 500 he can sue in the Court of Small Causes and when it exceeds that amount, in the ordinary civil courts.

It is for the second class of remedies that article 101 provides a period of limitation of 3 years from the termination of the voyage. Under article 102, the wages become payable only when they accrue due and it is on that date that the cause of action arises. All these three articles, therefore, relate to suits founded on contract and the time when limitation starts for these suits

(1) (1706) 2 Raym. 1204.

coincides with the time when the cause of action accrues under the substantive law.

Arts. 8 & 9.

71. Article 8 provides a period of one year for the recovery of price of food or drink sold by the keeper of a hotel or tavern and the cause of action arises when the food or drink is delivered. Article 9 provides a period of one year for a suit to recover the price of lodging and the cause of action accrues when the price becomes payable. These are also actions founded on contract and the cause of action arises when the food or drink is delivered or when the price of lodging becomes payable. There is no particular reason for providing a shorter period of limitation for these cases and for not bringing them under the uniform period of three years.

Arts. 30 & 31.

72. Article 30 is for a suit against a carrier for loss of or injury to goods and the cause of action accrues when the loss or injury occurs. The period of limitation is one year. Article 31 is for a suit against a carrier for compensation for non-delivery of, or delay in delivering, goods and the cause of action arises when the goods ought to be delivered, the period of limitation being one year. The liability of a common carrier not being a railway owned by the State or by a private person is governed by the English common law as modified by the Carriers Act, 1865. His liability is to some extent affected by the Contract Act which was enacted subsequently. This was settled by the Privy Council in *Irrawady Flottilla Co.* v. *Bhagwan Das*[1]. The liability of a railway is, however, governed by section 72 of the Indian Railways Act, which expressly negatives the application of the English Common law and the Carriers Act (III of 1865). Though by the definition of a common carrier in section 2 of the Carriers Act, a State-owned railway is excluded from the purview of the Act, articles 30 and 31 are applied to all carriers whether common carriers or State-owned railways or privately-owned railways. The language of the articles clearly indicates that they apply to suits based on contract as well as on tort. The cause of action accrues on and coincides with the time indicated in the third column of the 1st Schedule to the Limitation Act. If the same period is prescribed for suits founded on contract as well as tort much of the discussion relating to the basis of the suit, as to whether it is founded on

[1] 18 Cal. 620.

contract or on tort, would become unnecessary. The period of one year is undoubtedly too short and should be made three years. In the case of railways, it is common knowledge that a long time is spent by the consignee in correspondence with the railway authorities and it is only after a long-drawn crorrespondence that the aggrieved party files a suit. The Carriage by Air Act (XX of 1934) by rule 29 of the First Schedule provides that the right for damages for non-delivery of goods shall be extinguished if an action is not brought within two years from the date of arrival at the destination or from the date when the air-craft ought to have arrived. This rule is based on international conventions and should not be altered. Article 8 of the First Schedule to the Carriage of Goods by Sea Act (XXVI of 1925) provides that the provision in the rules shall not affect the rights and obligations of the carrier under any statute for the time being in force relating to limitation of the liability of owners of sea-going vessels. This provision also need not be altered.

73. Article 50 relates to a suit for the recovery of hire of animals, vehicles, boats or household furniture and a period of three years is provided. Time starts when the hire becomes payable, which is also the time when the cause of action accrues. This is clearly a suit on contract but it is immaterial whether the suit falls under the article relating to contract or under the residuary article as the period will be three years in either case. Art. 50.

74. Article 51 relates to a suit for the balance of money advanced in payment of goods to be delivered. A period of three years is provided and the time begins to run when the goods ought to be delivered. Article 52 relates to a suit for the price of goods sold and delivered, where no fixed period of credit is agreed upon and the time runs from the date of the delivery of the goods; the period is three years. Article 53 is for the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit. Time begins to run when the period of credit expires according to the terms of the contract. Article 54 is for the price of goods sold and delivered to be paid for by a bill of exchange, no such bill being given. The period of limitation is three years and commences when the period of the proposed bill elapses. All these four articles relate to the sale of goods and the event from which time begins to run is fixed Art. 51—54.

according to the terms of the contract either when the goods ought to have been delivered or when they are delivered or when the period of credit expires or when the period of the proposed bill of exchange elapses. The event, on the happening of which the time starts, is identical with the time when the cause of action accrues under the contract. There is no necessity, therefore, for these separate articles.

Arts. 55 & 56

75. Article 55 is for the price of trees or growing crops sold by the plaintiff to the defendant where no fixed period of credit is agreed upon. Naturally, the time runs from the date of sale. Article 56 is for the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment. Time begins to run when the work is done and the period is three years. These two cases also are instances of a breach of contract and the cause of action arises at the moment specified in the Act as the starting point for limitation.

Arts. 57-58.

76. Articles 57 and 58 relate to money lent by a cheque. In respect of both of them the time of accrual of the cause of action coincides with the time from which the period of limitation begins to run. A cheque is paid when it is cashed by the lender's bankers. It is only then that the money passes from the lender to the borrower, and, therefore, time is made to run from the moment when the cheque is paid. Mere giving of the cheque by the lender to the borrower does not amount to payment.

Art. 59.

77. Article 59 is for money lent under an agreement that it shall be payable on demand and the period of three years begins to run when the loan is made. In the absence of a special condition, when money is lent the debt becomes due immediately and the fact that money is payable on demand makes no difference. This was settled very early in *Norton* v. *Ellam*.[1] The demand is not treated as an essential part of the contract and time is made to run from the date of the loan and not from the date of demand. The article can accordingly, be merged with other articles dealing with contracts.

78. Article 60 relates to deposits of money including money of a customer in the hands of his banker and provides a period of 3 years from the date when the demand is made. In the case of deposit, the cause of action arises, when a demand for payment is made. In

[1]. (1837) 2 M & W 461 (See also 320 Hals., 2nd DEdn., p.p. 604 & 605.)

the case of a current account it has now been settled by the Court of Appeal in England (*Joachimson* v. *Swiss Bank*)[1] that it is a term implied in the relationship of a banker and customer that demand is necessary. The question was also considered by the Privy Council in *Mohamed Akbar Khan* v. *Attar Singh*[2] and *Sulaiman Haji* v. *Haji Abdulla*[3] and it may, therefore, be taken as settled law that in the case of a customer's current account with a bank, the cause of action does not accrue and the time does not start until the demand is made by him upon the bank (*Vide* also 20 Hals. 2nd Ed., p. 610). The substantive law, therefore, settles the cause of action and the time from which it accrues coincides with the entry in the third column.

79. Articles 61 and 62 do not relate to express contracts. Article 61 applies to cases in which a plaintiff would be entitled to recover money paid by him for the defendant to which sections 69 and 70 of the Contract Act apply. It has been held that this article applies to cases of contribution between co-debtors but not between joint debtors in respect of which article 99 makes a provision. Article 62 relates to what in England is known as action for 'Money had and received'. As Lord Mansfield puts it, Art. 61 & 62

"It is a kind of equitable action and lies when the defendant has received money which in justice and equity belongs to the plaintiff under circumstances which render a receipt by the defendant for the use of the plaintiff".

This action was discussed by the House of Lords in the well known case of *Sinclair* v. *Brougham*[4]. The action is treated as based on an implied contract and therefore falls within the proposed definition of contract. For both these articles, the starting point of limitation coincides with the accrual of the cause of action.

80. Article 63 deals with the payment of interest on the money due from the defendant to the plaintiff. This can only be under the terms of a contract between the Art. 63.

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1. 1921(3) K.B. 110.
2. I.L.R. 17 Lah. 557.
3. (1940) Kar 277.
4. (1914) A. C. 398.

parties and the time at which the cause of action arises, *viz.*, when the interest becomes due, coincides with the time when the period of limitation begins to run. If the contract is a registered contract, article 116 would apply. This makes it clear that the suit is based on contract.

Art. 64.

81. Article 64 relates to suits on "account stated" between the parties, and time begins to run when the accounts are stated in writing signed by the defendant or his agent duly authorised in this behalf, unless where the debt is, by a simultaneous agreement in writing signed as aforesaid, made payable at a future time and in that event limitation starts when the time arrives. The "account stated" does not extinguish the original debt. The account stated may arise from a mere admission of the debt as correct or out of an agreement for consideration such as by reduction of the amount or from striking a balance by setting off debts against credits. The original debt and its acknowledgment or a fresh agreement to pay are undoubtedly contractual obligations. In *Sequira* v. *Noronha*[1] the Privy Council described it as "a promise for good consideration to pay the balance". It may also be considered as a settlement from which arises a promise to pay the balance shown in the account which constitutes the consideration for the contract (*Bishan Chand* v. *Girdhari Lal*)[2]. The transction contemplated by article 64 differs in some respects from an acknowledgment under section 19 of the Limitation Act and an express promise contemplated by section 25 of the Contract Act. An "account stated" is always the result of mutual agreement between the parties. It implies a promise to pay and the promise need not be expressly stated. As Blackburn J., observed in*Laycock* v. *Pickles*[3] the real account stated is when several items of cross claims are brought into account on either side and being set against one another a balance is struck and the consideration for the payment of the balance is the discharge on either side; each party resigns his own rights on the sums he can claim in consideration of a similar abandonment on the other side and of an agreement to pay and to receive, in discharge of the balance found due. Such an account stated when in writing and signed by the defendant or his agent is tantamount to a new contract and is a substantive cause of

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1. (1934) A. C. P. 332.
2. 56 All. 376 P.C.
3. (1883) 33 L.J.(Q.B.) 43.

action in itself and a suit can be maintained on it. This establishes that a suit on an account stated is really a suit founded on a contract and the cause of action arises at the time specified in the Limitation Act for this article.

82. Article 65 refers to a suit founded on contract. The suit is for compensation for breach of a promise to do anything at a specified time or upon, the happening of a specified contingency. Naturally the cause of action arises only when the specified time arrives or when the specified contingency happens. This is the starting point of limitation stated in the third column. Art. 65.

83. Similarly, article 66 provides for a suit on a single bond where a day is specified for payment and time begins to run from the said date. According to the terms of the contract, the cause of action will arise only when the specified day arrives. Art. 66.

84. Article 67 provides for a suit on a single bond. where no date of payment is specified and cause of action arises on the date of the execution of the bond, which coincides with the starting point of limitation. Art. 67.

85. Article 68 relates to a suit on a bond subject to a condition and provides a period of three years from the date of the breach. Being a conditional contract, it is obvious that until the condition is broken there is no right of suit. The two dates therefore coincide. Art. 68.

86. Article 69 relates to a suit on a bill of exchange or promissory note payable at a fixed time after date. The cause of action arises when the bill or note falls due and that is the time from which the period runs under the Limitation Act (*vide* 20 Hals. II Edn. p. 606. *See* secs. 22, 23, 25, of the Negotiable Instruments Act). Art. 69

87. Article 70 deals with a suit on a bill of excnange payable at sight or after sight, but not at a fixed time and time starts when the bill is presented. Unless the bill is presented there can be no cause of action, because it is presentation that gives rise to it (*See* section 61 of the Negotiable Instruments Act). Art. 70.

88. Article 71 refers to a suit on a bill of exchange accepted, payable at a particular place, and time begins to run when the bill is presented at the place and that is Art. 71.

the cause of action as presentment at that place is essential under the Negotiable Instruments Act. (*See* Section 61 of the Negotiable Instruments Act).

Art. 72. 89. Article 72 is for a suit on a bill of exchange or promissory note payable at a fixed time after sight or after demand. When the fixed time expires the cause of action arises and time begins to run from that moment. (*See* sections 23 and 24 of the Negotiable Instruments Act).

Art. 73. 90. Article 73 relates to a suit on a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue. Time runs from the date of the bill or the note which also corresponds to the date of cause of action.

Art. 74. 91. Article 74 relates to a suit on a promissory note or bond payable by instalments. Time starts from the expiration of the first term of payment as to the part then payable; and for the other parts, the expiration of the respective terms of payment. The general principle of law is that when under a contract money is payable on a particular date the cause of action arises on that date. The two dates accordingly coincide.

Art. 75. 92. Article 75 relates to a suit on a promissory note or a bond payable by instalments which provides that if a defaults is made in payment of one or more instalments, the whole shall become due. The cause of action arises when the default is made, except where the payee or obligee waives the benefit of the provision. In such a case the cause of action arises when a fresh default is made. In the case of an instalment bond, which provides a penalty in case of default, it is accepted law that it is open to the payee or obligee to waive the default and wait for the next default, which gives rise to a fresh cause of action. The date in column 3 corresponds to the accrual of cause of action.

93. Article 76 relates to a suit on a promissory note given by the maker to a third person to be delivered to the payee after the happening of a certain event. Time starts from the date of delivery to the payee. This article is based on *savage* v. *Aldren* [1] The coincidence of the two dates exists here.

Art. 77. 94. Article 77 relates to a suit on a dishonoured foreign bill where protest has been made and notice given. Time

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[1]. 19 R.R. 707.

begins to run when the notice is given and that gives rise to the cause of action. See *Whitehead* v. *Walker*.[1]

95. Article 78 is for a suit by the payee against the drawer of a bill of exchange which has been dishonoured by non-acceptance. The cause of action is afforded by the refusal to accept and time starts from that date. Art. 78.

96. Article 79 is for suits by the acceptor of an accommodation bill against the drawer; the cause of action arises and time also runs from the date of payment by the acceptor of the amount of the bill. The accommodating party has a right of indemnity against the party to whom he lent his name (*Padmalochan Patar* v. *Girish Chandra*).[2] This is a case of implied contract.

97. Article 80 relates to a suit on a bill of exchange, promissory note or bond not expressly provided for in the Act. The period is three years from the date when the bill or note or bond becomes payable. This is a residuary article which provides for cases not governed by the previous articles and here, too, the date of cause of action coincides with the starting point of limitation. This one article would have been sufficient to cover the other articles above referred to, relating to bills of exchange or promissory notes or bonds. Art. 80.

98. Then we have a group of articles relating to contribution. Article 81 is for a suit by a surety against the principal debtor and time begins to run when the surety pays the creditor. Article 82 is for a suit by a surety against a co-surety and time runs from the date when the surety pays anything in excess of his own share. In these two cases the event on the happening of which the cause of action arises under the substantive law coincides with the time from which the period begins to run. Under section 145 of the Contract Act the law implies an obligation by the principal debtor and a co-surety to indemnify the surety and liability arises by reason of an implied obligation. Sections 146 and 147 of the Contract Act provide for payment of the amount by sureties. Article 83 is for suits on any other contract to indemnify and the starting point of limitation, as also of the accrual of the cause of action Art. 81—83.

(1) 1842) 9 M. & W. 506 followed in 3 Bom. 182.
(2) 46 Cal. 168.

under the substantive law, is when the plaintiff is actually indemnified.

Art. 84. 99. Article 84 is for a claim by an attorney or vakil for his costs of a suit and the cause of action accrues on the termination of the suit or business which corresponds to the date in col. 3. This is a contractual obligation implied by law.

Art. 86. 100. Article 86 is for recovery of money under an insurance policy. The plaintiff would be entitled to recover, in the case of a policy of life insurance, from the date of the death of the deceased and in the case of other policies, the date of the occurrence causing the loss. [The article has no application to endowment policies payable after a particular date.] This is also a contractual obligation and the time from which limitaton begins to run synchronises with the date of the accrual of the cause of action.

Art. 87. 101. Article 87 relates to a suit by the assured to recover premia paid under a policy voidable at the election of the insurers and the time begins to run and the cause of action accrues when the insurer elects to avoid the policy. In a case in which there is a contract which becomes void, section 65 of the Contract Act imposes an obligation to refund the benefit. This may be also treated as an action for money had and received (*Morrison* v. *Universal Mercantile Insurance.*)[1]

Art. 43, 97, 99, 100 & 107-109. 102. Articles 43, 97, 99, 100 and 107 to 109 relate to suits not based on express promises but on obligations implied or imposed by law which we have brought under the definition of contract. In all these cases, the cause of action arises on the dates on which limitation starts under the Act.

Art. 110. 103. Article 110 is for the recovery of arrears of rent and time begins to run when the arrears become due, the period of limitation being 3 years. The contract of lease may be express or implied. It may be inferred from mere occupation of property. It is a suit based on contract and the time when the cause of action arises coincides with the starting point of limitation.

Art. 111. 104. Article 111 is for a suit by a vendor of immovable property for personal payment of unpaid purchase money. No charge is claimed and the suit contemplated

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1. 8 Excl. 425.

is a mere personal action. The suit is founded on contract and the money becomes payable at the time fixed for completing the sale, or where the title is accepted after the time fixed for completion, on the date of acceptance of the title. This corresponds with the date of the starting point of limitation.

105. Article 113 is for a suit for specific performance of a contract. Such a suit is based on contract and the date of accrual of cause of action coincides with the starting point of limitation. Article 115 is a residuary article for breach of a contract and time starts when the contract is broken or where there are successive breaches, when the breach in respect of which the suit is instituted, occurs, or when the breach is continuing, when it ceases. These dates also correspond with the date of the accrual of the cause of action. Arts. 113 & 115.

106. Article 116 provides for compensation for breach of a contract in writing and registered and a period of six years is provided; time starts when the period of limitation would begin to run in a suit brought on a similar contract not registered. It has been held by the Privy Council in *Tricomdas Cooverji* v. *Shri Gopi Nath*[1] that the word "compensation" is not used in this article in the sense of unliquidated damages and that it also applies to recovery of a liquidated amount, as for example, rent under a lease. If the contract happens to be a registered contract, the period of limitation is extended to six years, and time runs from the event mentioned in column 3 of the Schedule to the Act. This article has been applied to very many cases covered by other specific articles where the contract is registered, which is an indication that all those suits are founded on contract. Article 131 also relates to suits on contract. Arts. 116 & 131.

107. If simplification is desirable, as undoubtedly it is, all the above-mentioned articles may be omitted and a provision may be made as in the English Act, that in case of suits founded on contract, time runs from the date on which the cause of action accrues and a uniform period of three years may be prescribed. It is not necessary to retain the period of six years in case of registered contracts on the analogy of specialty debts under English law.

1. I.L.R. 44 Cal. 759 (P.C.)

CHAPTER IV—SUITS FOUNDED ON TORT

108. What has been stated in paragraphs 64 and 69 above, applies equally to the articles governing suits on tort. It will be found from the discussion which follows that all the articles relating to suits on torts can be grouped together and brought under head, providing a period of three years limitation from the date of the accrual of the cause of action. These articles are; Articles 2, 19 to 29 and 32 to 42.

Art. 2.

109. Article 2 is for a suit for compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment in force for the time being in India. The period of limitation is 90 days and time begins to run when the act or omission takes place. This article is intended to cover the case provided for in England, by section 8 of the Public Authorities (Protection) Act, 1893. The provisions therein are somewhat elaborate and the period of limitation is six months. The object of the Legislature in England and in India seems to be to provide a shorter period of limitation in the case of actions against public authorities for any act done in pursuance or execution or intended execution of any Act or of public duty, or authority, or in respect of any neglect or default in the execution of such Act, duty or authority. It protects the public authorities by providing a shorter period of limitation. It has been held that so long as the officer concerned acts honestly and *bona fide*, he gets the advantage of the shorter period of limitation. If the statute authorises the injury, no action lies. If an officer purporting to act, in pursuance of a statute, does something which causes an injury or by reason of his omission to do an act an injury results, the person so injured is entitled to claim compensation for the neglect or default. If he abuses the power, the shorter period of limitation will not apply and the action will be outside the article. The law in England was altered by the Limitation Act of 1939 (Section 21) which provided a period of one year instead of six months. Time was made to run from the date of the accrual of the cause of action instead of from the act or neglect or default complained of, as under section 8 of the Public Authorities (Protection) Act. Owing to public agitation, the English Limitation Act was amended in 1954 and the period of limitation was increased to three years for actions relating to personal injuries. By the amending Act, Section

21 of that Act was repealed and a proviso to sub-section 1 of section 2 was added, cutting down the period of six years, which applies for actions founded on torts, to three years in such cases. The period, therefore, under the English law for actions on tort as respects personal injury, whether caused by a private individual or by a public authority, is now three years instead of six years as in the case of other actions based on tort. This article would come under the general provision for all suits on tort for which we propose to prescribe a period of 3 years from the date of accrual of the cause of action. There does not seem to be any justification for making a distinction between public authorities and a private citizen except in matters like notice under section 80 C.P.C. Further, if a shorter period for suits against public authorities is prescribed, it will compel parties to rush to a suit without exhausting the possibility of getting redress by negotiations which necessarily take time. One of us, Dr. Sen Gupta, is inclined to take a different view and has added a separate note to this Report on the subject. After a full consideration of his views we think that the consideration mentioned above in favour of a uniform period for suits against public authorities and private citizens should prevail and that no change is needed in the proposals suggested above.

110. Article 19 provides for suits for compensation for false imprisonment, a period of one year from the time the imprisonment ends. This is a suit based on tort. It is a continuing wrong within the meaning of section 23 of the Limitation Act and *terminus ad quem* is reached when the imprisonment ends. Art. 19

111. Articles 20, 21, 33, 34 and 35 may be considered together. Arts. 20, 21, 33, 34 and 35.

112. The Maxim of English law "*actio personalis moritur cum persona*" has been modified in India by various Acts. The Fatal Accidents Act provides that in the case of death of a person injured by a wrongful act, neglect or default, a right of suit accrues to recover damages for the benefit of the wife, husband, parent and child, if any, of the person who dies. But the suit has to be instituted in the name of the executor, administrator or representative of the deceased person. Under the Legal Representatives' Suits Act, XII of 1855, the executor, administrator

or representative of any deceased person has been given a right to bring a suit for a wrong committed in the life time of such person which occasioned pecuniary loss to his estate, provided the suit was in respect of a wrong committed within one year before the death. Death will not abate any cause of action relating to loss or damage to property. The damages recovered form part of the estate of the deceased. A suit may be maintained against the executor, administrator or representative of the deceased for any wrong committed by him in his life time for which he would have been subject to an action if the wrong was committed within one year before his death. Section 2 of that Act further provides that the death of either party to a suit shall not abate the suit. Section 306 of the Indian Succession Act provides that the right to prosecute or defend any action or special proceeding existing in favour of or against a person at the time of his death survives to and against his executor, administrator or representative. But an exception is made in respect of a cause of action based on defamation, assault as defined in the Indian Penal Code, or other personal injury not causing the death of the party. In England, until recently, the maxim above referred to applied generally till it was abrogated by the Law Reform (Miscellaneous Provisions) Act, 1934. But even under this Act, a cause of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other and for damages on the ground of adultery were excepted. The law, therefore, both in England and in India at the present moment is more or less the same. The difference lies only in the exceptions existing under the Indian law and the English law.

113. Article 20 relates to a suit filed by a legal representative on torts causing precuniary loss to the estate while article 21 relates to a suit filed by a legal representative for damages for death, which has to be a representative action. The other group of Articles, 33, 34, & 35 relate to suits against the legal representatives. Under articles 20 and 21, the date of death of the person is taken as the starting point of limitation. Under the Fatal Accidents Act, the suit is for damages for causing death by any wrongful act, neglect or default and the suit is for the benefit of the dependants. The suit under the Legal Representatives' Suits Act is restricted to wrongs which occasion pecuniary loss to the estate of the deceased and

the cause of action in respect of which according to the law then prevailing did not survive. Under the Succession Act, all rights of action survive to the executors or administrators except actions for defamation, assault or personal injuries not causing the death of a party. The substantive law preventing the abatement of the cause of action is laid down by the said Acts. The cause of action under the Fatal Accidents Act is the death and time under Art. 20 begins to run from the date of the accrual of the cause of action. However, under the Legal Representatives' Suits Act, as the suit is in respect of a wrong committed in the life time of a person but time is made to run from the date of the death, the running of time does not synchronise with the date of accrual of the cause of action. On the other hand under Articles 33 & 35, a period of 2 years is provided which runs from the date when the wrong complained of is done. This synchronises with the date of the accrual of the cause of action. The suits contemplated under the two Acts, *i.e.*, Legal Representatives' Suits Act and the Fatal Accidents Act relate to torts. No special period of limitation is provided for actions contemplated by section 306 of the Succession Act, as it was assumed that the provisions laid down in the Limitation Act will govern such actions.

114. A provision for the survival of the right of action having been made, the action may be treated as one founded on tort whether it is by or against an executor, administrator or representative and the time for limitation may be made to commence with the accural of the cause of action. If a period of three years from the accrual of the cause of action is provided no hardship will be caused to either party. In view of the proposed period of 3 years from the date of accrual of the cause of action the period of one year before death provided in the Legal Representatives' Suits Act will have to be abrogated. It may be observed here that instead of leaving the question of survival of the cause of action to be dealt with by three separate Acts, a consolidating amendment in an appropriate manner may be made in section 306 of the Indian Succession Act.

115. There is also a conflict of decisions under Section 306 of the Indian Succession Act as to whether a right to an action for malicious prosecution is one relating to personal injury not causing the death of the party and

whether it survives. This conflict may be set at rest by specifically bringing within the exception to section 306 of that Act, actions for malicious prosecution if it is intended that the cause of action in respect of such wrongs should not survive the death of the person aggrieved.

Arts. 22-25. 116. Article 22 is the residuary article for suits for compensation for any other injury to the person and time starts when the injury is caused. The period of limitation is one year. Article 23 is for compensation for malicious prosecution and time starts when the plaintiff is acquitted or the prosecution is otherwise terminated, the period again being one year. Article 24 relates to an action for libel and the period of limitation is one year from the time when the libel is published. Article 25 relates to slander and the period provided for is one year from the date when the words were spoken or, if the words are not *per se* actionable when the special damage complained of results. It is settled law that the cause of action for libel accrues from the date of the publication of the defamatory statement. When slander is actionable *per se* the cause of action is its publication and time runs from that date. If the action is maintainable only on proof of special damage, the happening of the damage is the cause of action. (See *Burry* v. *Perry*[1] and also *Darley Main Colliery Co.*, v. *Thomas Wilfrid*)[2]. In respect, therefore, both of libel and slander, the time from which limitation runs coincides with the accrual of the cause of action. The suits under all these articles are suits founded on tort and a uniform period of three years may be fixed for the institution of these suits, time running from the date of the accrual of the cause of action.

Arts. 26 & 27. 117. Article 26 is for compensation for loss of service occasioned by the seduction of the plaintiff's servant or daughter; the period is one year and time begins to run when the loss occurs. This also is a suit based on tort and so it may be brought under the uniform period of three years. Under the present law limitation starts when the cause of action accrues. These observations apply to Article 27.

Arts. 28 29 & 32. 118. Articles 28, 29 & 32 are for suits based on tort and there is no reason why they should not be brought under

1. (1725) Raym. 1588.
2. (1886) 11 A.C. 127.

the general category of torts and the period of three years applied to them. The dates in column three coincide with the dates of accrual of the causes of action.

119. Article 36 is a residuary article. It relates to suits for compensation for any malfeasance, misfeasance or nonfeasance independent of contract and not specially provided for and time starts when the malfeasance, misfeasance or nonfeasance takes place. This corresponds to the time of accrual of the cause of action. These suits will be governed by the proposed general article for suits on contracts and torts providing a period of three years. Art. 36.

120. Articles 37 to 42 relate to suits founded on tort and a period of three years is prescribed. The date of accrual of the cause of action and the date from which time begins to run coincide. Arts. 37 to 42.

Chapter V.—Suits Relating to Movable Property

121. Articles 48, 48A (second part), 49 and 145 come under the head of suits relating to movable property. In respect of Articles 48 and 49 the period of three years may be retained but the date of accrual of cause of action may be made the starting point of limitation. The latter part of these articles relating to suits for compensation for tort may be deleted as these suits would be covered by the general article for suits on tort. Article 48-A (second part) may be retained as it is. In Article 145, it would be more appropriate to make the date of the refusal after demand as the starting point of limitation and the period may be reduced to 3 years from that date.

Chapter VI.—Suits Relating to Trusts and Trust Property

122. Articles 48-A (1st part) and 134 (1st part), 48-B and 134-A to 134-C come under this head. Articles 48-A and 48-B were introduced by the amending Act of 1929 when section 10 of the Limitation Act was also amended, so as to provide that property comprised in a Hindu, Muhammedan or Buddhist religious or charitable endowment shall be deemed to be property vested in trust for a specific purpose and the manager of any such property shall be deemed to be a trustee for the purpose of the Act.

At the same time in respect of immovable property articles 134(A) to (C) were introduced. Article 134 includes trust property as well as mortgage property. This article may be split up and the portion relating to trust property may be brought under the above head. (See also paragraph 130). The existing period in all the above articles may be retained but the articles may be grouped as indicated in the Annexure.

123. The starting point of Limitation for suits covered by Art. 134-B is the date of death, resignation or removal of the transferor. This has given rise to some difficulties in certain cases. Thus, an Endowment Commissioner may find it necessary to challenge an alienation by one of the previous managers, after decades; or, there may be a gap of more than 12 years between the death, resignation or removal of one manager and the appointment of his successor. In such cases, it would be more equitable to make the date of the plaintiff's appointment as Manager the starting point for limitation. But there may be cases and circumstances where the existing provision may be more favourable to the institution. To provide for both contingencies, the later of the two dates should be taken as the starting point of limitation.

Chapter VII—Suits Relating to Immovable Property

Mortgages

124. Articles 105, 132, 134 (second part), 135, 146, 147 and 148 relate to mortgages. The Transfer of Property Act as amended in 1929 deals with the following kinds of mortgages:

(1) Simple mortgage,

(2) Mortgage by conditional sale,

(3) Usufructuary mortgage,

(4) English mortgage,

(5) Mortgage by deposit of title deeds,

and (6) Anomalous mortgage.

Apart from suits on the covenant to pay, the remedies available to a mortgagee, are stated in section 67 of that Act. After the mortgage money becomes payable the mortgagee is entitled under the Act to a decree either for foreclosure or for sale depending on

the nature of the mortgage. The right of foreclosure is given only to a mortgagee under mortgage by conditional sale or a mortgagee under an anomalous mortgage by the terms of which he is entitled to foreclosure. Under the law as it stood before 1929 the English mortgagee was entitled to foreclose or sell. As the right of foreclosure is restricted under the present Act to the two kinds of mortgage stated above, a simple mortgage or an English mortgage or a mortgage by deposit of title deeds carries with it only a right of sale. In the case of an anomalous mortgage the remedy depends upon the terms of the mortgage; the mortgagee under it may be entitled to foreclosure or sale, or possession. The only right of a usufructuary mortgagee is to recover possession of the property but he cannot sue either for sale or for foreclosure. Though there was some difference of opinion before the amendment as to whether a usufructuary mortgage could be created without delivery of possession to the mortgagee, the amended definition of a usufructuary mortgage enables the creation of a usufructuary mortgage even without delivery of possession. If the usufractuary mortgagee is not put in possession or if his possession is disturbed, he is entitled to recover possession of the property.

Arts. 135 & 146.

125. Before the decision of the Privy Council in *Vasudeva* v. *Srinivasa*[1] the view was taken that a suit by a mortgagee for sale of the property was governed by article 147 which gives a period of 60 years for foreclosure or sale. This view is no longer tenable in view of the decision of the Privy Council where it was pointed out that article 147 applied only to an English mortgage under which the mortgagee has the alternative of either bringing a suit for foreclosure or for sale and that the proper article to apply in the case of a suit for sale under a simple mortgage was article 132 which provides a period of 12 years from the date when the money sued for becomes due Under the existing law, the English mortgagee has no right of foreclosure. Like a simple mortgagee, he has to institute a suit for sale. Whether in view of the definition of English mortgage in the Transfer of Property Act he is entitled to recover possession also, is a debatable point.

126. In the Limitation Act there are two articles, 135 and 146 which provide a period of limitation for recovery

[1] 30 Mad. 426. (P.C.).

of possession by a mortgagee. If the suit is instituted in a court not established by Royal Charter, the period is 12 years (Art. 135) and if the suit is instituted in a court established by a Royal Charter the period is 30 years (Art. 146). In the former case, time begins to run when the mortgagor's right to possession determines while in the latter, time begins to run when the principal or interest was last paid on account of the mortgage debt. It seems to be unnecessary to maintain this distinction even assuming that under the present law the English mortgagee is entitled to recover possession of the property. The usufructuary mortgagee is undoubtedly entitled to recover possession of the property, either from the date of mortgage if possession is not delivered or, subsequently, if having been put in possession, his possession is disturbed. It would be sufficient, therefore, to provide only one article for a suit by a mortgagee for possession of immovable property mortgaged to him. A period of 12 years may be allowed. Time should run from the date when his right to possession accrues.

Art. 147. 127. As under an English mortgage there is no right of foreclosure or sale in the alternative, article 147 which in view of the Privy Council decision applies only to such mortgages, should be deleted. It is, however, necessary to make a fresh provision for a suit for foreclosure. A period of 12 years for such a suit may be provided counting limitation from the date when the money secured by the mortgage becomes due, as in the case of a suit for sale.

Art. 132. 128. Article 132 may also be amended by making it clear that it applies to mortgages. The article may run as follows:

"To enforce payment of money secured by a mortgage or otherwise charged upon immovable property—12 years when the money sued for becomes due."

Clause (c) of the Explanation is unnecessary as the amendment now proposed covers all mortgages whether a simple mortgage or mortgage by deposit of title-deeds or an English mortgage. The articles so amended will govern all suits by a mortgagee.

Art. 148. 129. We may next consider the question of redemption for which a period of 60 years is provided under article 148. In England, the period now is only 12 years and a suit for redemption is treated as a suit for possession of

land (*vide* section 12 of the Limitation Act, 1939). We propose that the period may be cut down to 12 years here also and in respect of any rights which have already accrued, a saving provision may be introduced in the sections of the Act limiting the period to 6 years from the date of the amendment or 12 years from the accrual of the right to redeem whichever is longer. The proviso to article 148 is unnecessary as Lower Burma is no longer a part of India.

130. Article 105 may be retained as it is. Article 134 relates to trust property and also to property mortgaged. It may be split up and the portion relating to mortgages may be deleted as the period of redemption is proposed to be reduced to 12 years. Arts. 105 & 134.

OTHER SUITS RELATING TO IMMOVABLE PROPERTY

131. Article 136 provides for a suit by a purchaser at a private sale for possession of immovable property when the vendor was out of possession at the date of the sale. The time of 12 years is counted from the date when the vendor was first entitled to possession. In other words, the purchaser and the vendor will be subject to the same period of limitation. Similarly, article 137 provides for a suit by a purchaser under an execution sale when the judgment-debtor was out of possession at the date of the sale. Limitation is counted from the time when the judgment-debtor became entitled to possession. If, however, the judgment-debtor was in possession at the date of the sale, article 138 provides that a suit should be instituted by the purchaser within 12 years from the date when the sale becomes absolute. All these are in substance suits based on the title of the predecessor-in-interest of the purchaser whether under an ordinary purchase or execution sale. Under Articles 136 and 137 time is made to run from the moment when the vendor or the judgment-debtor is first entitled to possession. Article 138 applies in cases where the judgment-debtor was in possession at the date of the sale and time starts when the sale becomes absolute. These suits may be left to be governed by the new article corresponding to article 144 by which we propose to provide a period of limitation for all suits for possession based on title. Though the definition of 'plaintiff' in the Limitation Act includes a person from or through whom the plaintiff derives his right to sue it is desirable to add Arts. 136 to 144.

a suitable explanation to the new article in order to make the position clear.

132. Articles 142 and 144 have introduced a good deal of confusion in the law relating to suit for possession by owners of property. The law as it stands whether in a suit under section 9 of the Specific Relief Act or in one covered by article 142 seems to favour a trespasser as against an owner. The anomaly is due to the decisions which have held that in an ejectment action by the owner of property it is not sufficient for him to establish his title but if he has averred in his plaint original possession and subsequent dispossession or discontinuance of possession he should go further and establish that his title was subsisting at the date of suit, in the sense that he was in possession of the property within 12 years before the date of the institution of the suit. That article 142 applies to a suit by the owner of the property as well as a person suing merely on the basis of a possessory title is the view taken by some courts [*vide* the Full Bench decisions in *Official Receiver, E*ᴛ *Godavari* v. *Govindaraju*[1] and *Bindhyachal Chand* v. *Ram Gharib*[2]] while others restrict its applicability to a suit based on a possessory title alone [vide *Jaichand Bahadur* v. *Girwar Singh*[3]; *Mt. Jijibai* v. *Zabu*[4]; and *Kanhaiyalal* v. *Girwar* and *others*[5]]. A person who is the owner of the property when he sues for recovery of possession has thus to establish not only his title but also that he was in possession of the property within 12 years if he frames his plaint as one for possesion after dispossession.

133. The decision of the Privy Council in *Agency Co.* v. *Short*[6] which was given under an analogous provision in 3 and 4 William 4, c. 27 (Act III of 1837 in the Colony of New South Wales) finally settled that the rule of prescription should be applied not to cases of want of actual possession by the plaintiff but to cases where the plaintiff has been out of possession and another was in possession for the prescribed time. Two conditions must be satisfied. There must be both an absence of possession by the person who had the right and actual possession by another, whether adverse or not, to bring the case within

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1. I.L.R. 1940 Mad. 1953.
2. 57 All. 278.
3. 41 All. 669.
4. 150 I.C. 679 (Nag.).
5. 51 All. 1042.
6. (1888) 13 Appeal Cases. 793.

the statute. The Supreme Court of New South Wales took the view that the period of prescription continued to run notwithstanding that the intruder had abandoned the land long before the expiry of 20 years from his first entry and no other person had taken possession of such land and that the owner should prove, even in such a case, that there was actual entry by him after the intruder had abandoned possession and vacated the land. It was this view that was negatived by Lord MacNaughten in the Privy Council.

134. The language in column 1 of article 142 does not refer to title and it speaks only of a suit for possession in which the plaintiff claims that while in possession of the property, he has been dispossessed or has discontinued the possession. The words "dispossession" and "discontinuance" have a particular significance in law. Dispossession occurs where a person comes in and puts another out of possession while discontinuance of possession takes place where the person in possession goes out and another person takes possession. It is not, therefore, enough to constitute 'discontinuance' *that a person goes out of possession;* this should be followed by the possession of another peron. The words dispossession and discontinuance are used in the article in this sense. The view taken in the Full Bench decisions cited above does not accord with this interpretation of the article and has led to very unjust consequences. In the very Full Bench decision affirming this rule[1], Leach C. J. observed: "it may be a hardship that a person who proves a title to property should lose it to a trespasser unless he can also show that he has been in possession within 12 years of suit, but that is what the Limitation Act says and the court must administer the Law." We propose that this hardship should be remedied. If the defendant wants to defeat the right of the plaintiff he must establish his adverse possession for over 12 years which has the effect of extinguishing the title of the owner by the operation of section 28 of the Limitation Act read with article 144. If he fails to do so there is no reason for non-suiting the plaintiff merely because he was not able to prove possession within 12 years. The inequity of this requirement is illustrated by the following example: If A, B, and C are independent and successive trespassers on the property and the suit for possession is brought by the true owner against C, it must fail unless the plaintiff

[1] I.L.R. (1940) Mad. 953 at p. 962.

proves his possession within 12 years, though the last trespasser C was not in possession except for a short period.

135. In our opinion, article 142 must be restricted in its application only to suits based on possessory title. The plaintiff in such a suit seeks protection of his previous possession which falls short of the statutory period of prescription, to recover possession from another trespasser. The plaintiff's prior possession no doubt entitles him to protection against a trespasser though not against the true owner. The true owner's entry would be a rightful entry and would interrupt adverse possession. But if the defendant trespasser is a person who wishes to oust the plaintiff who was himself a prior trespasser or a person who did not come into possession as a trespasser but continued to hold it as such, in order to enable the plaintiff to continue his wrongful possession without disturbance and to enable him to acquire a title by adverse possession, the law must undoubtedly step in and give relief to the plaintiff. As against the true owner a person who is in possession for a length of time short of the statutory period is not entitled to any protection but the net result of the decisions under article 142 is that the true owner must prove that he had a subsisting title on the date of suit. We, therefore, suggest that in order to avoid injustice and inequity to the true owner and to simplify the law, article 142 should be restricted to suits based on *possessory title* and the owner of the property should not lose his right to it unless the defendant in possession is able to establish adverse possession. Article 142 may, therefore, be amended as follows:

> "For possession of immovable property based on possessory title when the plaintiff while in possession of the property has been dispossessed—12 years from the date of dispossession."

136. The new article to which reference has already been made will govern suits for possession of immovable property or any interest therein based on title, the period being 12 years from the time when the possession of the defendant becomes adverse to the plaintiff. The article as amended will cover cases at present falling under articles 136, 137 and 138. Articles 140 and 141 may be deleted and a suitable explanation may be added. Articles 136, 137, 138, 140, 141 become unnecessary. Article

143 relating to a suit for possession on forfeiture or breach of condition should in our opinion be retained as it is. Some complications may result if this article is merged in the general article relating to suits for possession based on title.

Chapter VIII—Suits on other claims

137. *Suits for Accounts.*—Articles 85, 88, 89, 90 and 106 relate to suits for accounts. Of these, Article 85 is based on well established commercial usage and it would not be advisable to change it. We do not recommend any change in regard to the other articles also. All these articles may, therefore, be retained in their present form.

138. *Suits for a declaration.*—Articles 92, 93, 118, 119 and 129 relate to suits for a declaration in respect of various matters. In Arts. 92 and 118, the starting point of limitation is the knowledge of the plaintiff. These articles should be retained in their present form except that the period of limitation in the case of Article 118 should be reduced to 3 years. Arts. 93, 119 and 129 may be consolidated into one Article and the date when the right to sue first accrues may be made the starting point of limitation. For all these articles, we recommend that a uniform period of three years should be provided.

139. *Suits to set aside documents and decrees.*—Articles 91 and 114 fall under this group. A consolidated article with a period of three years from the date when the facts entitling the plaintiff to have the instruments cancelled or set aside or the contract rescinded, first becomes known to him, may be substituted. Suits for setting aside decrees should also be brought under this article.

140. Article 44 which falls under this head has to be retained in its present form. It applies to voidable transactions and time does not begin to run until the ward attains majority, the period being three years. If this article be deleted and the matter is left to be governed by Article 144 the quandom minor would have 12 years from the date of majority. The intention of article 44 is to limit the time for the exercise of the option to set aside the transfer to three years after attaining majority. To extend the period of 12 years would result in keeping the alienee's title in an unsettled state for a long period. It is well settled that disputes as to title should be decided as early as possible.

141. Where there is more than one ward, the provisions of Sec. 7 will apply. There is, however, one difficulty which has to be provided for. Section 6(3) will not apply where article 44 applies. If the ward dies before attaining majority or within three years after attaining majority, the law is not certain on the question as to the period within which the legal representative should institute a suit (vide *Alamelu Amma* Vs. *Krishna Chetty & others*)[1]. In the case of an assignee it was held that the option should be exercised within three years after attaining majority. The same should apply to a legal representative also. If the ward died while a minor, leaving a legal representative who is a major or is under no disability, we consider that the latter should have a period of only three years from the date of death of the minor ward. The question remaining to be considered is whether a provision is necessary to cover cases where such legal representative is under any disability or when the ward leaves more than one legal representative, all such legal representatives are under disability. We consider that such cases would be very rare and we do not therefore deem it necessary to make any special provision.

142. *For relief on the ground of fraud or mistake.*— Articles 95 and 96 relate to suits for setting aside a decree obtained by fraud or for relief on the ground of fraud or mistake: the period of limitation is 3 years from the time when the fraud or mistake becomes known to the plaintiff. In the proposed section 18 we have provided that for relief on the ground of fraud or mistake, the period of limitation should not begin to run until the plaintiff has discovered the fraud or the mistake, as the case may be, or with reasonable diligence could have discovered it. Suits for relief on the ground of fraud or mistake may be founded either on contract or on tort or the relief claimed may be to set aside an instruments or a decree. If the former, the suit would come under the article for contract and tort read with section 18 and the result would be the same as that provided in the present Act. If the relief claimed is to set aside an instrument on the ground of fraud or mistake or to set aside a decree on the ground of fraud the suit will fall under the proposed article 23. It is, therefore, unnecessary to retain articles 95 and 96.

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[1] A.I.R. 1954 Mad. 58·5, overruling A.I.R. 1930 Mad. 821.

143. It is no doubt true that the proposed article which is to replace articles 91 and 114, would provide that the limitation should commence to run from the date of the knowledge of the facts entitling the plaintiff to the relief claimed. Suits which fall under the proposed article may also be covered by section 18; but there may be cases in which the relief to cancel or set aside an instrument may not be based either on fraud or mistake and, therefore, by way of abundant caution it would be safer to retain the proposed article though this may result in some overlapping.

144. *Other suits.*—Article 1 provides a period of 30 days for contesting an award of the Board of Revenue under the Waste Lands (Claims) Act, 1863 (XXIII of 1863) and time begins to run when notice of the award is delivered to the plaintiff. The suit contemplated by this article is not based either on contract or tort. Under the Waste Lands (Claims) Act a special procedure is prescribed for disposal of claims and objections by persons in cases where government disposes of waste land. The claim or objection has to be filed under the Act before the Collector and the party aggrieved is entitled to take the matter to the Board of Revenue against his determination. If the decision of the Board is adverse to the party, he has to file a suit to establish his claim or right in a Court specially constituted under the Act. Article 1 applies to such suits. This Act has been repealed, so far as Bombay is concerned, by Bombay Act IX of 1943, Waste Lands Claims (Bombay) Repeal Act, 1943. It is not known whether the other States are following the procedure under this Act when disposing of waste lands. The only reported case under this article was decided in 1866 (*Taranath Dutt V. Collector of Sylhet.*[1]) It seems unnecessary, therefore, to retain this article in the Limitation Act as the Waste Lands (Claims) Act itself does not apply in many States. It is open to a State to enact a law continuing it, as under item 34 of the State list, the subject matter is within the exclusive legislative power of the States and a State may prescribe a period of limitation in the Waste Lands (Claims) Act itself. We therefore recommend that the article be deleted. Art. 1.

145. Article 3 provides a period of limitation of six months for the summary remedy to recover possession of Art. 3.

[1] (1866) 5. W.R. p. 1.

land provided by section 9 of the Specific Relief Act. Whether section 9 of the Specific Relief Act should be retained or repealed is one of the questions to be considered when dealing with that Act. It seems to us an unnecessary provision resulting in multiplicity of suits. Any order made under that provision is not final as even if the plaintiff recovers possession the unsuccessful defendant can institute a regular suit to establish his title and get back possession of the land. The section does not serve the purpose of preventing a breach of the peace for which provision already exists in section 145 of the Criminal Procedure Code. Whoever fails in proceedings under that Code has necessarily to institute a suit to establish his right. The necessity, therefore, for this provision is not obvious. The provisions of the Criminal Procedure Code are adequate to prevent breach of the peace. For recovery of possession by a person having only a possessory title our proposal in respect of article 142 will be more than sufficient to protect the trespasser's possession as against another trespasser. We, therefore, recommend the deletion of article 3. On this topic also our colleague Dr. Sen Gupta takes a different view which he has stated in a note appended to the Report. Notwithstanding the considerations stated in that note we are of the view that section 9 of the Specific Relief Act does not serve any useful purpose and that article 3 should be deleted.

Art. 5. 146. (Article 4 has been deleted by section 3 of the Amending Act XX of 1937). Article 5 provides a period of one year for what are sometimes called "under chapter suits". In Bombay, this article was repealed by the Indian Limitation (Amendment) Act (XXX of 1925) and article 64A was inserted providing a period of three years so far as that State is concerned. To make the law uniform in all the States we suggest that the period may be left to be governed by the appropriate article for ordinary suits. The Civil Justice Committee recommended such a course as far back as 1925. There is no reason for penalising a person who wants to take advantage of the summary procedure by cutting down the ordinary period of limitation to which he would otherwise be entitled. This article may, therefore, be deleted.

Art. 6. 147. Article 6 prescribes a period of one year for a suit for recovery of a penalty or for forfeiture and time runs from the date when the penalty or forfeiture is incurred. Such a suit may well fall either under the article

for 'contract' or the residuary article. A learned commentator has doubted the usefulness of a similar provision in England. If any such right of suit exists in favour of any person, it will fall under the residuary article under which we propose to fix a period of 3 years from the date when the right to sue accrues.

148. Article 10, relating to pre-emption, being for a special category of suits should be retained, but in view of the conflicting judicial opinion on the interpretation of the word 'whole' in the 1st part of column 3, an amendment of that part is necessary. The words "of the whole or part of the property" may be added before the words "when the instrument of sale is registered". Art. 10.

149. If the application or objection may be treated as a suit and disposed of instead of first making a summary order, and then requiring a suit to be filed to set aside the order under O. 21 Rule 63 or O. 21 Rule 103, multiplicity of proceedings will be avoided and articles 11, 11-A and 13 will be unnecessary. But, if they are to be retained, they may be recast and put into one article. Similarly, Articles 12 and 14 may be recast as indicated in the Annexure. As Patni sales are peculiar to Bengal and the subject is within the legislative competence of the State, the existing explanation to article 12 may be deleted. Art. 11-14.

150. Articles 15 and 16 are for suits against Government (i) to set aside any attachment, lease or transfer of immovable property by the revenue authorities for arrears of Government revenue and (ii) to recover money paid under protest in satisfaction of a claim made by the revenue authorities on account of arrears of revenue or on account of demands recoverable as such arrears. A three year period of limitation seems to us suitable for these suits. We would, therefore, omit these articles and leave these suits to be governed by the residuary article. Arts. 15 & 16.

151. Article 17 provides a period of one year for recovering from Government compensation for land acquired for public purposes and time runs from the date of the determination of the amount of compensation. Under Section 11 of the Land Acquisition Act, the Collector is enjoined to determine the compensation which, in his opinion, should be allowed for the land acquired. Under Section 16, after the award is made under section 11, the Collector is entitled to take possession of the land which vests absolutely from that moment in the Government free from all Arts. 17 & 18.

encumbrances. Part III of the Act provides for a reference to the court in a case where the person interested does not choose to accept the award. On such a reference, the court determines the amount of compensation to be awarded for the land acquired and under section 26(2) of the Act the award made by the court is deemed to be a decree and a statement of the grounds of such award is a judgement within the meaning of sub-sections 2 and 9 respectively of section 2 of the Civil Procedure Code. This sub-clause, it is common knowledge, was inserted by an amending Act of 1921 as the Privy Council held in *Rangoon Botatoung Co.* V. *Collector of Rangoon*[1] *and Special Officer Salsette Building Sites* V. *Dassa Bhai*[2] that there was no right of appeal against the award made by the court as it was not a decree. Section 54 of the Act which was inserted by the amending Act of 1921 confers a right of appeal to the High Court under the award and a further appeal from the appellate decree of the High Court to the Supreme Court subject to the provisions of the Code of Civil Procedure. Under section 31(1) of the Act, the Collector is enjoined to pay the compensation awarded by him under section 11 to the person interested and entitled thereto according to his award. If the person refuses to receive it or if there is no person competent to alienate the land, the course the collector has to follow is indicated in the Act. In a case which does not end in a reference to a court under section 18 of the Act, the Collector's award under section 11 is final and determines the rights of the parties. If the Collector does not choose to tender or pay the amount as required by section 31 of the Act, no machinery is provided under the Act to compel the Collector to pay the amount. But the Limitation Act (article 17) provides that a person in such a situation can file a suit against the Government for the recovery of the amount within one year from the date of the determination of the amount of compensation. The period provided is very short and it is difficult to see why a provision is not made in the Act itself to compel the Collector to pay the amount by making the award executable against him instead of driving the aggrieved party to a suit after giving the statutory notice required by section 80 of the Civil Procedure Code. Such a suit itself may drag on for a long time with the result that a person who has unwisely accepted the award as final would not be

[1] 40 Cal. 21.
[2] 37 Bom. 506.

able to recover compensation for a long time though the property would be taken possession of by the Collector immediately after the award is made. In fact, there have been cases in which aggrieved persons have been compelled to go to court. The absence of provision such as we have indicated appears to be a lacuna in the Land Acquisition Act. The situation should be remedied by amending that Act and making the award enforceable by treating it as a decree within the meaning of section 2(2) of the Civil Procedure Code. If this is done, the injustice to the citizen will be remedied and there will not be any need for the retention of article 17 of the Limitation Act.

152. A similar reasoning will apply to article 18. Under section 48 of the Land Acquisition Act, it is open to Government to withdraw from the acquisition of any land of which possession has not been taken; but sub-section 2 of that section provides that in that event the Collector shall determine the amount of compensation due for the damages suffered by the owner in consequence of the notice or of any proceedings thereunder and pay such amount to the person interested with all costs reasonably incurred by him in the prosecution of the proceedings under the Act. Sub-section 3 of that section makes the provisions of Part III of the Act applicable for the determination of such compensation. Here again, if the Collector does not choose to pay or does not agree to determine the compensation, the only remedy of the party is to institute a suit for the recovery of such compensation within one year from the date of the refusal by the Collector to complete the acquisition. The proper course in such a contingency would be to entitle the party to have the amount of compensation determined by an application to the court and to make such determination by the court an executable decree. It may be observed that when the matter is referred to the court under section 18 of the Act, the award of the court is deemed to be a decree by reason of sub-section 2 of section 26. The object of the Amending Act of 1921 which provided that the award was to be deemed to be adverse was merely to enable the aggrieved person to appeal to the High Court and to the Privy Council. From the form in which the court makes an award, it is not always clear whether it is an executable decree. If the award as drafted, is not executable, there may be a difficulty in realising the amount from the Collector if he does not choose to pay it. It is

necessary, therefore, that the Land Acquisition Act should be suitably amended so as to fix a time-limit, say, six months within which the Collector must pay or deposit the compensation and a provision made in Section 31 of the Act that on the failure of the Collector to pay or deposit an application may be made by any person interested, for a direction that the compensation be deposited in court. If these amendments are made in the Land Acquisition Act, articles 17 and 18 of the Limitation Act will be unnecessary. If, however, it is decided not to give the person a summary and speedy remedy as suggested, there is no reason to restrict the period of limitation to one year as at present. The matter may be left to be governed by the proposed residuary article with its period of three years. In any view, therefore, it is unnecessary to retain these articles.

Arts. 45, 46 and 121.

153. Articles 45, 46 and 121 may be omitted as they relate to subjects in the State list and the States may well provide suitable periods of limitation for these matters.

Art. 47.

154. Article 47 cuts down three years the period of 12 years available against a trespasser in possession where an order under 145 Criminal Procedure Code has been passed. If a suit is not filed within three years, the title itself would be extinguished. This Article may be omitted and the person aggrieved may be left to file the suit within the period allowed under the new article corresponding to Article 144.

Arts. 98, 124 to 126, 127, 128 & 146-A.

155. Articles 98, 124 to 128 and 146-A relate to special categories of suits and as it has been found not possible to bring them under other heads these articles may be retained in their present form. The period under Article 128 may be reduced to 3 years as suggested by the Civil Justice Committee.

Art. 47.

156. Article 94 has to be retained in its present form, as the starting point of limitation is the date of knowledge after insanity had ceased, which will not coincide with the date of accrual of the cause of action.

Arts. 103, 104 and 112.

157. Article 112 relates to a suit for a call by a Company registered under any Statute or Act. Such a suit will fall under the article relating to Contract or under the residuary article. Articles 103 and 104 which relate to suits for dower might be left to be governed by the residuary article. All these articles may, therefore, be deleted.

158. Articles 117 and 122 relate to suits upon a foreign judgment (as defined in the C.P.C.) and upon a judgment or recognisance. The periods provided now are respectively 6 years and 12 years from the date of judgment or recognisance.. In England, such suits are treated as suits on contracts. Adopting that principle, we propose to fix for these suits the same period as for suits provided on contracts, *viz.*, three years from the date of judgment or recognisance. We would frame one article dealing both with judgments and recognisances. Arts. 117 and 122.

159. Article 120 is the residuary article for suits. This is intended to provide for the omission of any other kind of suit. Under the existing scheme we find that a number of residuary articles are provided, one at each stage. This is unnecessary. A single residuary article may be provided fixing the period of limitation as three years from the time when the right to sue accrues. The period should not, as now, differ with different groups of suits and should be the same whether it is a suit founded on tort or contract or on any other right of action. Art. 120.

160. Article 123 relating to legacies etc. may be retained in its present form subject to an amendment which will bring it in accord with the Privy Council ruling in *Ghulam Muhammad* v. *Sheikh Ghulam Hussain*[1], to the effect that the article only applies where the suit is brought against an executor or administrator or some person legally charged with the duty of distributing the estate. Art. 123.

161. A suit under Article 130 for resumption or assumption of rent-free land is of very rare occurrence. As will appear hereafter, the Government will have thirty years even if the residuary article applies. This article may therefore be omitted. Art. 130.

162. Article 149 relates to suits by or on behalf of the Government. The period is 60 years from the time when the period of limitation would begin to run in a like suit by a private person. We recommended that that period may be reduced to 30 years as under the English law. This will bring the period in accord with that prescribed for local authorities under Article 146-A. Art. 149.

Chapter IX—Appeals

163. For an appeal against a death sentence, Article 150 prescribes a period of 7 days. This in our opinion is too 153, 154 and 155.

1. 54 All. 193 (P.C.)

short a period and it should be increased to 30 days. Article 154 provides a period of 30 days for an appeal under the Code of Criminal Procedure to any court other than the High Court and article 155 provides a period of 60 days for an appeal to the High Court against a conviction under the same Code. We think that this distinction should not exist. Instead of articles 150, 154 and 155, one single article may be substituted, for appeals to any court under the Criminal Procedure Code, providing a period of 30 days from the date of the sentence or order appealed from. Article 153 prescribes a period of limitation for an appeal to a High Court from an order of a subordinate court refusing leave to appeal to the Supreme Court. This article may, therefore, be deleted.

Art. 151.

164. Article 151 provides for appeals against decisions of a single judge of a High Court in the exercise of its original jurisdiction. It applies only to the High Courts of Calcutta, Madras, Bombay and Punjab in the exercise of their original jurisdiction. Article 162 relating to applications for review of judgments in the exercise of original jurisdiction by the High Court applies to Nagpur also. Some of these High Courts, namely. Madras, Calcutta and Bombay exercise ordinary original jurisdiction within defined territorial limits. Others do not exercise ordinary original jurisdiction but only extraordinary or special statutory original jurisdiction. We consider that there is no reason for providing for differing periods in regard to the various High Courts and that a uniform period should be prescribed. We also think that the existing period of 20 days under Article 151 is too short and attempts are often made to get an extended period by first applying for leave to appeal as a pauper (for which a period of 30 days is provided) and then on failure to obtain such leave to ask for time for payment of a court fee, the delay in such payment being excused by the court. We, therefore, recommend that a uniform period of 30 days be prescribed for all appeals to a High Court against its own decrees or orders.

Arts. 152, 153 and 156

165. With regard to appeals under the Code of Civil Procedure a distinction is made between appeals to the High Court from mofussil courts and appeals to the subordinate appellate courts. In the latter case a period of 30 days is provided while in the former it is 90 days. We think that a uniform period of 30 days for all appeals, should be provided. No hardship will result from a reduction of the period because usually considerable time

is taken in obtaining copies of the decree and judgment, and the time taken for that purpose is excluded under section 12 of the Limitation Act. Normally, even for the purpose of an appeal from the subordinate courts to the district court more than a month or two is required to obtain such copies. That will give sufficient time for preferring the appeal. In the case of appeals to the High Court the time taken for obtaining copies is much longer as in many cases judgments have to be printed. Even in cases where printing is dispensed with the parties will be able to add the time spent in obtaining copies to the period provided. Perhaps formerly there was jurisdiction for providing a longer period for appeals to the High Courts as they were at a distance and means of communication were difficult. But this consideration is not of importance now that means of quick transport are available.

Art. 157.

166. Article 157 provided a period of 6 months limitation for an appeal against an order of acquittal. The recent Act amending the Criminal Procedure Code has substituted a period of 3 months for 6 months. We do not propose any alteration of that period though we think that even the present period is too long to enable the State to make up its mind to file or not to file an appeal against an order of acquittal. The recent amendment to the Code also provides for an appeal against an acquittal in cases instituted on private complaints if the High Court grants special leave. This application for special leave should, under Section 417 (4), be filed within 60 days of the date of the order of acquittal. We recommended that the appeal itself should be filed within one month from the date of grant of leave to appeal under section 417(3) of the Code.

167. It may be pointed out that in England the time provided for appeals is less than a month except in the case of appeals to the House of Lords, for which it is six months.

Chapter X—Applications

168. Firstly, as regards applications for special leave to appeal to the Supreme Court the Supreme Court itself has, under the authority vested in it by law, provided the following periods of limitation for such applications:

(1) 90 days from the date of judgment or order sought to be appealed from,

(2) 60 days from the date of the refusal of leave to appeal by the High Court,

(3) Appplications for special leave to appeal in a case involving death sentence, 30 days from the date of the judgment, final order or sentence.

Items (1) & (2) apply to civil as well as criminal matters. [*Vide* Order XIII R.I. & Order XXII R.I. of Supreme Court Rules. Items (3) is covered by Order XXI. R.2]. In all these cases power is reserved to the Supreme Court to extend the time if sufficient cause is shown. These rules cover applications for special leave contemplated by Articles 136 & 132(2) of the Constitution.

169. New provisions are necessary prescribing periods of limitation for making applications to the High Court for a certificate of fitness to appeal to the Supreme Court in the following cases:

(1) for applications under Article 132(1) for a certificate that the case involves a substantial question of law as to the interpretation of the Constitution (This applies to civil, criminal and other proceedings);

(2) for applications for a certificate under Article 133 (Civil matters);

(3) for applications for a certificate under article 134(1)(c), (Criminal matters).

Article 179 of the Limitation Act, as it now stands, provides a period of 90 days for applications under the C.P.C. and does not prescribe a period of limitation for other applications. A comprehensive provision has, therefore, to be made for applications to the High Court for a certificate of fitness for appeal to the Supreme Court. For all such applications a period of 30 days may be prescribed.

Arts. 182 & 183.

170. Article 182 has been a very fruitful source of litigation and is a weapon in the hands of both the dishonest decree-holder and the dishonest judgment-debtor. It has given rise to innumerable decisions. The commentary in Rustomji's Limitation Act (5th Edn) on this article itself covers nearly 200 pages. In our opinion the maximum period of limitation for the execution of a decree or order of any civil court should be 12 years from the date when the decree or order became enforceable (which is usually the date of the decree) or where the decree or subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring

periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree. There is, therefore, no need for a provision compelling the decree-holder to keep the decree alive by making an application every three years. There exists a provision already in section 48 of the Civil Procedure Code that a decree ceases to be enforceable after a period of 12 years. In England also the time fixed for enforcing a judgment is 12 years. Either the decree-holder succeeds in realising his decree within this period or he fails and there should be no provision enabling the execution of a decree after that period. To this provision an exception will have to be made to the effect that the court may order the execution of a decree upon an application presented after the expiration of the period of 12 years, where the judgment-debtor has, by fraud or force, prevented the execution of the decree at some time within the twelve years immediately preceding the date of the application. Section 48 of the Civil Procedure Code may be deleted and its provisions may be incorporated in this Act. Article 183 should be deleted and the decrees of the High Court must be placed on the same footing as decrees of other courts. There is no justification for making a distinction between decrees or orders passed by the High Court in the exercise of their original civil jurisdiction or orders of the Supreme Court and other decrees. As a consequence of the foregoing changes. Sections 19 and 20 will require to be altered in the manner indicated in paragraph 52 above. We do not, however, consider it necessary to make any change in the application of Sections 14 and 15 to execution applications. The period of 12 years will, of course, not apply to decrees granting a perpetual injunction. This has been provided for in Section 48 C.P.C. This exemption should apply only in the case of perpetual injunctions. In the case of mandatory injunctions, we recommend that a period of limitation of 3 years should be provided.

171. We are of opinion that some effective, may, even drastic, provision is necessary to discourage, if not altogether stop the large-scale evasion of the execution of decrees by judgment-debtors. The decree of a court is meant to be obeyed and should be obeyed if courts are to command the necessary respect and confidence of the public. From the point of view of the decree-holder there is nothing so distressing as an infructuous execution

application and it has been truly said that his troubles begin only after the decree. The Rankin Committee has also adverted to this, but no steps have so far been taken to make decrees effective and easily executable. We consider that the most effective way of instilling a healthy fear in the minds of dishonest judgment-debtors would be to enable the Court to adjudicate him an insolvent if he does not pay the decretal amount after notice by the decree-holder, by specifying a period within which it should be paid on the lines of the Bombay amendment to the Presidency Towns Insolvency Act.

Arts. 158 & 178.

172. Section 14 of the Arbitration Act, 1940 provides for the filing of an award in a court and under section 17 of the Act, the court must proceed to pronounce judgment according to the award. Section 32 bars suits to question the award. In the result, an award can be enforced only by filing it in court and obtaining a judgment thereon, and a suit cannot be filed on it. An award has to be filed even for the purpose of setting it aside. A provision is, therefore, required fixing a time within which an arbitrator should file his award. Section 14(2) of the Arbitration Act provides that he shall file it into court (a) at the request of any party or person claiming under him and (b) on an order from the court. It has been held by the various High Courts[1] that article 178 applies only to an application by the party to the court to direct the arbitrator to file his award into court. The present position is that the arbitrator can file the award even after a party's application has been barred and he can do so even after a suit on the original cause of action has been instituted, as there is no limitation for his doing so (*Gondalal Motilal* v. *Mathura Das Ram Prasad and others*[2]). We consider that there should be a time limit, for the arbitrator to file the award and that the period should be 30 days from the last date of service of notice of the making of the award on any of the parties. The Arbitration Act may be suitably amended to give effect to this recommendation.

Arts. 161, 162 & 173.

173. Articles 161, 162 and 173 may be grouped together and a general article for review of judgment may be provided, fixing a period of 30 days computed from the date of decree or order sought to be reviewed.

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(1) *Vide* I.L.R. (1942) 2 Cal. 69 (*Keshri Mull* v. *Meg Raj*) and I.L.R. 27 Pat. 86 (*Jagdish* v. *Sunder*).

(2) A.I.R. 1951 Nag. 32.

174. Articles 160, 163, 168 and 172 provide for setting aside orders of dismissal for default. For all these a period of 30 days from the date of dismissal may be provided. Arts. 160, 163, 168 and 172.

175. Article 164 for setting aside an *ex parte* decree may be retained and combined with Article 169 relating to the rehearing of an appeal heard *ex parte*. The term "duly served" in column 3 has been interpreted to include substitute service. We consider that it could be unjust to impute knowledge of the decree to a party when the party was not served with summons. The article should be amended suitably. Arts. 164 & 169.

176. Articles 165 to 167 deal with applications relating to execution matters. The existing period of 30 days may be retained. Arts. 165, 166 and 167.

177. The existing provision in Article 170 for leave to appeal as pauper may be retained. Art. 170.

178. Article 171 prescribes a period of 60 days from the date of the abatement for setting aside the abatement and articles 176 and 177 prescribe a period of 90 days from the date of death for having legal representatives of a deceased plaintiff or defendant or a deceased appellant or respondent added. For these cases the period may be reduced to 40 days. The court will have the power to excuse the delay in view of the alterations we have proposed in section 5 of the Limitation Act and hence there will be no hardship. Arts. 171, 176 and 177.

179. Articles 159, 174 and 175 do not, in our opinion, require any change and they may be retained, in their present form. Arts. 159, 174 and 175.

180. As we are omitting article 182, article 180 will apply to all purchasers in execution whether decree-holders or not. The period should, we think, be reduced to one year. Art. 180.

181. There should be a residuary article for applications (including petitions) as in the case of suits and we consider that the period should be the same as at present, namely, 3 years from the date when the right to apply accrues. Art. 181.

Chapter XI—Conclusion

182. With a view to give a clear picture of the proposals formulated by us, we have attached an annexure to the

Report, embodying our proposals in the form of an Act. It is, therefore, unnecessary to summarise the proposals as is usually done at the end of a Report of this nature.

M. C. SETALVAD,
(Chairman),

M. C. CHAGLA,
K. N. WANCHOO,
G. N. DAS,
P. SATYANARAYANA RAO,
N. C. SEN GUPTA,*
V. K. T. CHARI,
D. NARSA RAJU,
G. S. PATHAK,
G. N. JOSHI,
(Members).

K. SRINIVASAN,
DURGA DAS BASU,
Joint Secretaries.

BOMBAY;
The 21st July, 1956.

*Dr. Sen Gupta has signed the report, subject to the Note appended below.

NOTE BY DR. N. C. SEN GUPTA

I regret that I cannot agree with the proposal to alter the provisions of the Articles 2, 3, 7 to 9. My colleagues have virtually extended the period in the case of these suits to 3 years on the basis that they are founded on contract and should come under the general rule regarding suits on contracts or torts. That may be so. But at the same time there are, in my opinion, reasons of policy why, in respect of some of these Articles, the shorter period of limitation should be fixed.

The reasons for the proposed amendments in respect of Article 2 are firstly that there should be no difference between the State and private parties in respect of suit on tort and that a suit for compensation in respect of a thing purported to be done by an officer under some enactment in force is nothing but a tort for which the Government is liable. To the general principle of parity between the Government and private persons in respect of limitation, I have no serious objection. But there are important differences between ordinary torts by private persons and suits under this Article. There may be suits of this character which are purely suits for damages for a particular wrong against a particular person. But most of these cases would be cases in which an officer of the Government has been acting or purporting to act under authority of an enactment and in most of these cases, questions about the validity of the enactment or of the interpretation of it upon which the officer is acting would be in question. In such cases it is by all means necessary that such suits should be disposed of as quickly as possible,—so that if the decision goes against the action of a particular officer, the Government may take early steps that further action may not be taken on the erroneous view of law. Further, it must be remembered that the Government is made vicariously responsible for the acts of its officers and having regard to the extremely large area of Government activities and its responsibility for acts of a multitude of officers, it is necessary that the Courts' decision about the correctness or otherwise of the act of such officers should be made known to the Government as soon as possible.

Public policy requires that acts of Government officials purported to have been done under the provisions of some enactments in force should be tested, if necessary, as soon as possible—in order that public administration may not

be affected by an erroneous course of action based on wrong application of the law for a long time; and if there has been an error, it should be rectified as soon as possible.

I am afraid that the principle that this makes a discrimination between the Government and a private person does not provide a correct approach to the problem. The difference in the provisions lies not in the character of the person against whom the suit is brought but in the nature of the claim which justifies a short period.

The injury that can be done by delay is illustrated by the Inter-State Sales Taxation cases. Before the Special Bench of the Supreme Court finally decided on the invalidity of certain State laws, a large amount of money had been recovered by Government from traders and the situation, if all that money had to be returned in suits brought for compensation was apparently so serious as to call for a special legislation by ordinance validating the realisation already made.

With regard to Article 5, I should have thought that this matter should await our decision in connection with the Specific Relief Act whether suits under section 9 of that Act should be retained. The basis of the provision of section 9 of the Specific Relief Act is that possession should be protected. If anybody has a better right to possession, he must establish his title before recovering possession. In the meantime, the possession should be protected. On similar grounds section 145 of the Criminal Procedure Code gives a protection to possession where there is likelihood of a breach of peace. In cases where a strong or wily man quietly dispossesses a person, section 9 provides a short remedy for protecting possession, pending any suit for title that might be brought by the disseisor. It is a summary decision for the protection of present possession and there are, in my opinion, strong reasons why this summary procedure should continue.

It is stated in the report that it means a duplication of litigation. I should think that this duplication is already there in many cases which have not been touched. For instance where possession is claimed in execution of a decree and the other side objects to the delivery of possession by claiming a right independent of the judgment-debtor and an order has been made under Order 21 Rule 97, that is to be summarily decided on the finding whether

the objector is in possession on behalf of the judgment-debtor or not, leaving open a suit to be instituted thereafter for declaration of title. For that suit a short period of one year is provided. I do not see why for similar reasons the same provisions should not be made in respect of any summary decision on the basis of possession.

Similarly, under the present Articles which have not been proposed to be repealed, Articles 11, 11(A) and 13 of the present Act provide for short limitation in cases where there has been a summary decision by a court, the principle seems to be that where a matter has been once before the court and the court has given a summary decision, it is in accordance with public policy that the matter should be finalised without delay.

The idea of the majority is that Article 142 of the present Act should be limited to suits on the ground of possession alone and the limitation for that would be 12 years. If that is so, then a special limitation for a suit on the ground of prior possession is unnecessary. But where a person who has lawfully acquired possession of property is disturbed by another on the ground of his previous possession, the latter would have 12 years within which he should bring his suit and in the meantime the right of the person who has possession will be kept in suspense for the long period of 12 years. I do not think that there is any principle of justice or fairness in doing so. If the Articles are to be as proposed in the draft, it would rather seem not that suit under section 9 of the Specific Relief Act should go but that Article 142 itself should be simply omitted.

N. C. SENGUPTA.

ANNEX

The proposals as inserted in the existing Act:

(This is not a draft Bill)

[Additions to the existing Act are shown in italics wherever possible. Corresponding provisions of the existing Act are given in the margin.]

PART I—PRELIMINARY

1. **Short title, extent and commencement.**—(1) This Act may be called the Limitation Act, 1956.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) This section and section 26 shall come into force at once. The rest of the Act shall come into force on ———.

2. **Definitions.**—In this Act, unless there is anything repugnant in the subject or context,—

(1) "applicant" includes—

(a) *a petitioner,*

(b) any person from or through whom an applicant or *petitioner* derives his right to apply *and*

(c) *any person whose estate is represented by the applicant or petitioner as executor, administrator or other representative.*

(2) "application" includes a petition;

(3) *"contract" shall have the same meaning as in the Indian Contract Act (IX of 1872) and includes an obligation imposed by law to restore or to make restitution of any benefit derived by a person, on the basis of unjust enrichment;*

(4) "defendant" includes—

(a) any person from or through whom a defendant derives his liability to be sued *and*

(b) *any person whose estate is represented by the defendant as executor, administrator or other representative.*

(5) "foreign country" means any country other than India, but includes also the State of Jammu and Kashmir;

(6) "good faith"; nothing shall be deemed to be done in good faith which is not done with due care and attention;

(7) "India" means the territory of India excluding the State of Jammu & Kashmir;

(8) *"Prescribed period" means the period of limitation prescribed for any suit, appeal or application, as the case may be, and computed in accordance with the provisions of this Act;*

(9) "plaintiff" includes—

(a) any person from or through whom a plaintiff derives his right to sue, *and,*

(b) *any person whose estate is represented by the plaintiff as executor, administrator or other representative.*

(10) "suit" does not include an appeal or an application;

(11) *"tort" includes all civil wrongs independent of contract; and*

(12) "trustee" does not include a benamidar, a mortgagee remaining in possession after the mortgage has been satisfied, or a *person in wrongful possession* without title.

PART II—LIMITATION OF SUITS, APPEALS & APPLICATIONS Sec. 3.

3. **Bar of Limitation.**—Subject to the provisions contained in sections 4 to 23 (inclusive), every suit instituted, appeal preferred, and application made, after the *prescribed period* shall be dismissed, although limitation has not been set up as a defence.

Explanations.—(1) A suit is instituted, in ordinary cases, when the plaint is presented to the proper officer; in the case of a pauper, when his application for leave to sue as a pauper is made; and in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator.

(2) *An application by notice of motion is made when it is presented to the proper officer.*

(3) *For the purposes of this Act, any claim by way of set-off shall be deemed to be a separate suit and to have been commenced on the same date as the suit in which the set-off is pleaded.*

(4) *For the purposes of this Act, a counter-claim shall be deemed to be a separate suit and to have been commenced on the date on which it is made.*

4. **Where Court is closed when period expires.**—Where the *prescribed period* expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day that the Court re-opens.

5. **Extension of period in certain cases.**—Any appeal or application *other than an application under any of the provisions of Order XXI of the Code of Civil Procedude* (*V of* 1908) may be admitted after the *prescribed period*, when the appellant or applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.—The fact that the appellant or applicant was misled by any order, practice or judgment of the High Court in ascertaining the *prescribed period* may be sufficient cause within the meaning of this section.

Sec. 6.

6. **Legal Disability.**—(1) When a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the *prescribed period* is to be reckoned, a minor, or *is* insane, or *is* an idiot he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time *specified* therefor in the third column of the schedule.

(2) Where such person is, at the time from which the *prescribed period* is to be reckoned, affected by two such disabilities, or where, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period, after both disabilities have ceased, as would otherwise have been allowed from the time so *specified.*

(3) Where the disability continues up to the death of such person, his legal representative may institute the suit or make the application within the same period after the death as would otherwise have been allowed from the time so *specified.*

(4) Where the representative referred to in sub-section (3) is at the date of the death of *the person whom he represents* affected by any such disability, the rules contained in sub-sections (1) and (2) shall apply.

(5) *Where a person under disability dies after the disability ceases but within the period of limitation allowed to him under this section, his legal representative may insittute a suit or make the application within the same period after the death as would otherwise have been allowed had the person under disability not died.*

Sec. 7. 7. **Disability of one of several plaintiffs or applicants.**— Where one of several persons jointly entitled to institute a suit or to make an application for the execution of a decree is under any such disability, and a discharge can be given, without the concurrence of such person, time will run against them all; but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.

Explanation.— (1) *This section applies not only to claims for recovery of money but also to claims for the enforcement of other rights including rights in immovable property;*

Explanation.— (2) *The manager of a Hindu Joint Family governed by the Mitakshara law shall be deemed to be capable of giving a discharge only if he is in management of the Joint Family property.*

Sec. 8. 8. **Special Exceptions.**—Nothing in section 6 or in section 7 applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period within which any suit must be instituted or application made.

Sec. 9. 9. **Continuous Running of time.**—Where once time has begun to run, no subsequent disability or inability to sue stops it:

Provided that, where letters of administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues.

Sec. 10. 10. **Suits against Trustees and their Representatives.**— Notwithstanding anything hereinbefore contained, no suit

against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time.

Explanation.—For the purpose of this section any property comprised in a Hindu, Muhammadan or Buddhist religious or charitable endowment shall be deemed to be property vested in trust for a specific purpose, and the manager of any such property shall be deemed to be the trustee thereof.

Sec. 11.

11. **Suits on foreign contracts.**—(1) Suits instituted in India on contracts entered into a foreign country shall be subject to the rules of limitation contained in this Act.

(2) No foreign rules of limitation shall be a defence to a suit instituted in India on a contract entered into in a foreign country unless the rule has extinguished the contract and the parties were domiciled in such country during the period prescribed by such rule.

PART III—COMPUTATION OF PERIODS OF LIMITATION

Sec. 12.

12. **Exclusion of time in legal proceedings.**—(1) In computing the period of limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded.

(2) In computing the period of limitation prescribed for an appeal the time requisite for obtaining a copy of the decree, sentence or order appealed from and also of the judgment on which such decree sentence or order is founded shall be excluded.

(3) *The provisions of sub-section* (2) *shall also apply to an application for leave to appeal or for a review of judgment or for revision.*

(4) In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

Explanation.— *Any time taken by the Court to prepare the decree or order before an application for copy thereof is filed shall not be regarded as time requisite for obtaining the copy within the meaning of this section.*

13. **Exclusion of time of proceeding bonafide in Court without Jurisdiction.**—(1) In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceedings, whether in a Court of first instance or of appeal *or of revision,* against the defendant, shall be excluded, where the proceeding *relates* to the same *matter in issue* and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it. Sec. 13.

(2) In computing the period of limitation prescribed for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance, or of appeal, *or of revision,* against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

(3) *The Provisions of sub-section* (1) *shall apply in like manner and subject to the same restrictions to a fresh suit filed in pursuance of an order under the provisions of Rule* (1)(2) *of Order XXIII of the Code of Civil Procedure* (*V of* 1908) *notwithstanding anything contained in Rule* 2 *thereof.*

Explanation I.—In excluding the time during which a former suit or application was pending, the day on which that suit or application was instituted or made, and the day on which the proceedings therein ended shall both be counted.

Explanation II.—For the purposes of of this section, a plaintiff or an applicant resisting an appeal or revision shall be deemed to be prosecuting a proceeding.

Explanation III.—For the purposes of this section misjoinder or parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

14. **Exclusion of time in certain other cases.**—(1) In computing the period of limitation prescribed for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded. Sec. 15.

(2) In computing the period of limitation prescribed for any suit, of which notice has been given, *or for which the previous consent or sanction of the Central or the Stat*

Government is required, in accordance with the requirements of any enactment for the time being in force, the period of such notice or, *as the case may be, the time requisite for obtaining such consent or sanction* shall be excluded.

Explanation.—*The interval of time between the date of applying for the consent or sanction of the Government concerned and the date of receipt of the order of such Government (both days inclusive) shall be deemed to be the time requisite for obtaining the said consent or sanction.*

(3) *In computing the period of limitation prescribed for any suit or application for the execution of a decree by any receiver or interim receiver appointed in proceedings for the adjudication of a person as an insolvent or by any liquidator or provisional liquidator appointed in proceedings for the winding up of a company the period between the date of institution of such proceedings and the date of appointment of such receiver or liquidator, as the case may be, and, in addition, a period of three months, shall be excluded.*

(4) In computing the period of limitation prescribed for a suit for possession by a purchaser at a sale in execution of a decree, the time during which a proceeding to set aside the sale has been prosecuted shall be excluded.

(5) In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from India and from the territories beyond India under the administration of the Central Government, shall be excluded.

Sec. 13.

Sec. 17.

15. **Effect of death on or before the accrual of right to sue.**—(1) Where a person, who would, if he were living, have a right to institute a suit or make an application, dies before the right accrues, *or where such right accrues on his death,* the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application.

(2) Where a person against whom, if he were living, a right to institute a suit or make an application would have accrued dies before the right accrues *or where such right accrues on his death* the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom the plaintiff may institute or make such suit or application.

(3) Nothing in sub-sections (1) and (2) applies to suits to enforce rights of pre-emption or to suits for the possession of immovable property or of a hereditary office.

16. **Effect of fraud or mistake.**—(1) *Where in the case of any suit or application for which a period of limitation is prescribed by this Act, either—* Sec. 18.

(a) *the suit or application is based upon the fraud of the defendant or his agent or of any person through whom he claims or his agent; or*

(b) *the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of any such person as aforesaid; or*

(c) *the suit or application is for relief from the consequences of a mistake; or*

(d) where any document necessary to establish plaintiff's or applicant's right has been fraudulently concealed from him;

the period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake, as the case may be, or could with reasonable diligence have discovered it, or in the case of the concealed document, when he first had the means of producing it or compelling its production.

Provided that nothing in this section shall enable any suit to be brought or application to be made to recover, or enforced any charge against, or set aside any transaction affecting, any property which—

(i) *in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know or have reason to believe that any fraud had been committed, or*

(ii) *in the case of mistake, has been purchased for valuable consideration, subsequent to the transaction in which the mistake was made, by a person who did not know or have reason to believe the mistake had been made,* or

(iii) *in the case of the concealed document, has been purchased for valuable consideration by a person who was not a party to the concealment, and did not at the time of the purchase know or have reason to believe such concealment;*

(2) *The Court may extend the period prescribed for an application for execution of a decree or order, upon such application presented after the expiry of the said period, if the judgment-debtor has by fraud or force, prevented the execution of the decree or order at sometime within the said period.*

Provided that such application is made within a period of one year from the date of discovery of fraud or of the cessation of force, as the case may be.

17. **Effect of acknowledgment in writing.**—(1) Where, before the expiration of the *prescribed period* for a suit or an application in respect of any property or right *other than an application for the execution of a decree or order,* an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but, subject to the provisions of the Indian Evidence Act, I of 1872, oral evidence of its contents shall not be received.

Explanation I.—For the purposes of this section an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come, or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than the person entitled to the property or right.

Explanation II.—For the purposes of this section, "signed" means signed either personally or by an agent duly authorised in this behalf.

Sec. 20. 18. **Effect of payment on account of debt or of interest on legacy.**—(1) Where payment on account of a debt or of interest on a legacy is made before the expiration of the *prescribed period,* by the person liable to pay the debt or legacy, or by his agent *duly authorised in this behalf* a fresh period of limitation shall be computed from the time when the payment was made.

Provided that, save in the case of a payment of interest made before the 1st day of January, 1928, an acknowledg-

ment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.

(2) Where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment for the purpose of sub-section (1).

Explanation.—Debt *does not* include money payable under a decree or order of Court.

19. **Effect of acknowledgment or payment by another person.**—(1) The expression "agent duly authorised in this behalf," in sections 17 and 18 shall, in the case of a person under disability, include his lawful guardian, committee or manager, or an agent duly authorised by such guardian, committee or manager to sign the acknowledgment or make the payment. Sec. 12.

(2) Nothing in the said section renders one of several joint contractors, partners, executors or mortgagees chargeable by reason only of a written acknowledgment signed or of a payment made by, or by the agent of, any other or others of them.

(3) For the purposes of the said sections—

(a) An acknowledgment signed, or a payment made, in respect of any liability, by, or by the duly authorised agent of, any widow or other limited owner of property who is governed by the Hindu law, shall be a valid acknowledgment of payment, as the case may be, as against a reversioner succeeding to such liability; and

(b) Where a liability has been incurred by, or on behalf of, a Hindu undivided family as such, an acknowledgment or payment made by, or by the duly authorised agent of, the manager of the family for the time being shall be deemed to have been made on behalf of the whole family.

20. **Effect of substituting or adding new plaintiff or defendant.**—(1) Where, after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party, *unless the Court, if satisfied* that the omission to include the said plaintiff or defendant was due to a mistake made in good faith, orders that the suit shall, as regards him, be deemed to have been instituted earlier. Sec. 22.

(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to an assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.

Sec. 23.

21. **Continuing breaches and wrongs.**—In the case of a continuing breach of contract and in the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues.

22. **Suit for compensation for act not actionable without special damage.**—In the case of a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results.

23. **Computation of time mentioned in instruments.**—All instruments, shall for the purposes of this Act, be deemed to be made with reference to the Gregorian calendar.

PART IV—ACQUISITION OF OWNERSHIP BY POSSESSION

24. **Extinguishment of right to property.**—At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

PART V—SAVINGS

25. **Savings.**—(1) Nothing in this Act—

(a) shall affect section 25 of the Indian Contract Act, 1872 (IX of 1872); and

(b) shall apply to proceedings under any law for the time being in force relating to marriage and divorce. (Acts to be specified in the Bill).

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the *prescribed period in this Act*, the provisions of section 3 shall apply, as if such period were prescribed therefor in *this Act*, and for the purpose of determining

any period of limitation prescribed for any suit, appeal or application by any special or local law,—the provisions contained in sections 4 to 23 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law;

26. [Section 30 of the present Act would have worked itself out. A new saving provision for the transition may be incorporated as suggested in paragraph 62 of thi Report]

Description of suit, appeal or application	Period of limitation	Time from which period begins to run	Articles in the present Act covered
1	2	3	4
	FIRST DIVISION: SUITS		
	PART I		
	Contract and Tort		
1. *Suits founded on contract or on tort.*	*Three years*	*The date on which the cause of action accrues.*	2, 7 to 9. 19 to 43, 50 to 84, 86, 87, 97, 99 to 102, 107 to 111, 113, 115, 116 and 131.
	PART II		
	Movable Property		
2. To recover specific movable property or its value.	Three years	The date on which the cause of action accrues.	48, 49
3. To recover movable property deposited or pawned, from a depository or pawnee.	Three years	*The date of refusal after demand.*	145
4. To recover movable property deposited or pawned and afterwards *sold by* the depository or pawnee for valuable consideration.	Three years	When the sale becomes known to the plaintiff.	48-A (Second Part)
	PART III		
	Trusts & Trust Property		
5. To recover possession of immovable property conveyed or bequeathed in trust and afterwards transferred by the trustee for valuable consideration.	Twelve years	When the transfer becomes known to the plaintiff.	134 (First Part).
6. *Like suit in respect of movable property sold.*	Three years	When the transfer becomes known to the plaintiff.	48—A (First part)

1	2	3	4
7. To set aside a transfer of immovable property comprised in a Hindu, Muhammadan or Buddhist religious or charitable endowment, made by a manager thereof for valuable consideration.	Twelve years.	When the transfer becomes known to the plaintiff.	154 A
8. *Like suit in respect of movable property sold.*	Three years.	When the sale becomes known to the plaintiff.	48 B
9. By the manager of a Hindu, Muhammadan or Buddhist religious or charitable endowment to recover possession of movable or immovable property comprised in the endowment which has been sold or transferred by a previous manager for valuable consideration.	Twelve years.	The date of death, resignation or removal *as the case may be, of the transfer, or the appointment of plaintiff as manager, whichever* is *later.*	134-B and 134-C
PART IV			
Immovable Property			
10. By a mortgagor			
(*a*) to redeem or recover possession of immovable property mortgaged.	Twelve years.	When the right to re-deem or to recover possession accruess.	148 & 134 (Second Part)
(b) to recover surplus collections received by the Mortgagee, after the mortgage has been satisfied.	Three years.	When the mortgagor re-enters on the mortgaged property	
11. By a mortgagee			
(*a*) to enforce payment of money *secured by a mortgage or otherwise* chaged upon immovable property.	Twelve years.	When the money sued for becomes due.	132
(*b*) *for foreclosure*	Twelve **Years.**	When the money secured by the mortgage becomes due.	147
(*c*) for possession of immovable property mortgaged.	Twelve years.	*When the mortgagee becomes entitled to possession.*	135 & 146.
12. For possession of immovable property *bassed on possessory title*, when the plaintiff while in possession of the property has been dispossessed.	Twelve years.	The date of dispossession	142
13. (*a*) For possession of immovable property or any interest therein *based on title.*	Twelve years.	When the possession of the defendant becomes adverse to the plaintiff.	47, 138 and 144
Explanations.—For the purposes of this Article			
(*i*) The title of a remainder-man or reversioner (other than a landlord) or devisee shall be deemed to have accrued only when the estate fell into his possession			140
(*ii*) The title of a person entitled to possession on the death of a Hindu or Muhammadan female *with a limited interest , or life, estate* shall be deemed to have accrued only when the female .			141

1	2	3	4
	(*iii*) *In the cases specified in Explanations* (*i*) & (*ii*) *above the possession of the defendant shall be deemed to have become adverse only on the respective dates of accrual of title.*		
	(*iv*) A purchaser at a sale in execution of a decree shall be deemed to be a representative of the judgment-debtor who was out of possession at the date of sale.		136 & 137
14. Like suit where the plaintiff has become entitled by reason of any forfeiture or breach of condition.	Twelve years.	When the forfeiture is incurred or the condition is broken.	143
15. By a landlord to recover possession from a tenant.	Twelve years.	When the tenancy is determined.	139
PART V			
Other Claims			
16. For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties.	Three years.	The close of the year in which the last tem admitted or proved is entered in the accounts; such year to be computed as in the account.	85
17. By a principal against his agent or factor for an account.	Three years.	When the account is during the continuance of the agency demanded and refused or where no such demand is made, when the agency terminates.	88,89
18. By a principal against his agent for neglect or misconduct.	Three years.	When the neglect or misconduct becomes known to the plaintiff.	90
19. For an account and a share of the profits of a dissolved partnership.	Three years.	The date of the dissolution.	106
20. To declare the forgery of instrument issued or registered.	Three years.	When the issue or registration becomes known to the plaintiff.	92
21. To obtain a declaration that an alleged adoption is invalid or never, in fact, took place	*Three years.*	When the alleged adoption becomes known to the plaintiff.	118
22. *Other suits for declaration.*	*Three years.*	*When the right to sue first accrues.*	93, 119 and 129
23. To cancel or set aside an instrument *or decree or* for the recession of a contract.	Three years.	When the facts entitling the plaintiff to have the instrument *or decree* cancelled or set-aside or the contract rescinded first become known to him.	91, 114
24. To set aside a transfer of property made by the guardian of a ward.			
(*a*) by the ward who has attained majority.	Three years.	When the ward attains majority.	44

1	2	3	4
(*b*) *by the ward's legal representative*			
(*i*) *When the ward dies within three years from the date of attaining majority.*	*Three years.*	*When the ward attains majority.*	
(*ii*) *When the ward dies before attaining majority.*	*Three years.*	*When the ward dies.*	
25. To enforce a right of pre-emption whether the right is founded on law or general usage, or on special contract.	One year.	When the purchaser takes under the sale sought to be impeached physical possession of the whole property sold or, where the subject of the sale does not admit of physical possession *of the whole or part of the property*, when the instrument of sale is registered.	10
26. (*a*) By a person against whom an order under *Rules* 63 *or* 103 *Order XXI of* the Code of Civil Procedure or under Sec. 23 of the Presidency Small Causes Courts' Act has been made to establish the right which he claims to the property comprised in the order.	One year.	The date of the *final* order.	11, 11-A.
(*b*) To alter or to set aside any decision or order of a Civil Court in any proceeding other than a suit, or any act or order of an officer of Govt. in his official capacity.	One year.	Do.	13 & 14
(*c*) To set aside a sale by a Civil or Revenue Court or a sale for arrears of Govt. revenue or for any demand recoverable as such arrears.	One year.	When the sale is confirmed or would otherwise have become final and conclusive had no such suit been brought.	12
27. Upon a judgment, including a foreign judgment, or a recognisance.	Three years.	The date of judgment or recognisance.	117 & 122
28. For property which the plaintiff has conveyed while insane	Three years.	When the plaintiff is restored to sanity and has knowledge of the conveyance.	94
29. To make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust.	Three years.	The date of the Trustee's death, or, if the loss has not then resulted, the date of the loss.	98
30. For a legacy or for a share of a residue bequeathed by a testor, or fore a distributive share of the property of an intestate, against an executor or administrator *or some other person wrongfully charged with the duty of distributing the estate.*	Twelve years.	When the legacy or share becomes payable or deliverable.	123

1	2	3	4
31. For possession of a hereditary office.	Twelve years.	When the defendant takes possession of the office adversely to the plaintiff.	124
Explanation.—An hereditary office is possessed when the profits thereo are usually received, or (if there are no profits) when thef duties thereof are usually performed.			
32. Suit during the life of a Hindu or Muhammadan female by a Hindu or Muhammadan who if the female died at the date of instituting the suit would be entitledto the possession of land, to have an alienation of such land made by the female declared to be void, except for her life or until her re-marriage.	Twelve years.	The date of the alienation.	125
33. By a Hindu governed by the law of the Mitakshara to set aside his father's alienation of ancestral property.	Twelve years.	When the alienee takes possession of the property.	125
34. By a person excluded from joint family property to enforce a right to share therein.	Twelve years.	When the exclusion becomes known to the plaintiff.	127
35. By a Hindu for arrears of maintenance.	*Three years.*	When the arrears are payable.	128
36. By or on behalf of any local authority for possession of any public street or road or any part thereof from which it has been dispossessed or of which it has discontinued the possession.	Thirty years.	The date of the dispossession or discontinuance.	146-A
37. Any suit by or on behalf of the Central Govt. or any State Govt. except a suit before the Supreme Court in the exercise of its original jurisdiction.	*Thirty years.*	When the period of limitation would begin to run under this Act against like suit by a private person.	149
PART VI **Residuary**			
38. Suits for which no period of limitation is provided elsewhere in this schedule.	Three years.	When the right to sue accrues.	120 (merging 6, 15, 16, 103, 104 and 112)
SECOND DIVISION : APPEALS.			
39. Appeal from an order of acquittal under the Code of Criminal Procedure (V of 1898)			
(a) *Under Sub Section (1) and (2) of Section 417 of the said Code.*	*Three months.*	The date of the order.	5
(b) *Under Sub Section (3) of Section 417 of the same Code.*	*One month.*	*The date of the grant of special leave.*	

1	2	3	4
40. *Under the same Code to any court from a sentence or order not being an order of acquittal or under the Code of Civil Procedure (V of 1908) to any court from any decree or order.*	Thirty days.	The date of such decree or order or sentence	150, 154, 152 153, 155, 156
41. *From a decree or order of any High Court to the same court.*	Thirty days.	The date of the decree or order.	151
THIRD DIVISION—APPLICATIONS			
42. Under the Arbitration Act, 1940			
(*a*) for the filing in court of an award.	Thirty days.	The date of service of the notice of the making of the award.	178
(*b*) for setting aside an award or getting an award remitted for reconsideration.	Thirty days.	The date of service of notice of the filing of the award.	158
43. Under the Code of Civil Procedure to have the legal representatives of a deceased plaintiff, appellant, defendant or respondent, made a party.	Thirty days	The date of death of the plaintiff, appellant, defendant, or respondent, as the case may be.	176, 177
44. Under the same Code for an order to set aside an abatement.	Thirty days.	The date of abatement.	171
45. To restore a suit or appeal or application for review dismissed for default of appearance or for failure to pay costs of service of process or to furnish security for costs or otherwise not prosecuted.	Thirty days.	The date of dismissal	160, 163, 168, 172
46. To set aside a decree passed *ex parte* or to rehear an appeal decreed or heard *ex-parte*.	Thirty days.	The date of the decree or where the summons was not duly served when the applicant had knowledge of the decree.	164, 166
Explanation:—*For the purpose of this article, substituted service under Rule 20 of Order V of the Code of Civil Procedure (V of 1908) shall not be deemed to be due service.*			
47. For leave to appear and defend a suit under summary procedure.	Ten days	When the summons is served	159
48. *For review of judgment by any court.*	Thirty days.	The date of the decree or order.	161, 162, 173
49. For the payment of the amount of a decree by instalments.	Thirty days.	The date of decree	175
50. (1) *For the enforcement of a decree granting a mandatory injunction.*	*Three years.*	*The date of the decree or where a date is fixed for performance, such date.*	

1	2	3	4
(2) *For the execution of any other decree or order of any civil Court.*	Twelve years.	*When the decree or order becomes enforceable (or* where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought takes place.	182, 183, Sec. 48 C.P.C.
Provided that an application for the execution or enforcement of a decree granting a perpetual injunction shall not be subject to any period of limitation.			
51. *To record an adjustment or satisfaction of a decree.*	Thirty days.	When the payment or adjustment is made.	17
52. To set aside a sale in execution of a decree including any such application by a judgment debtor.	Thirty days.	The date of sale	16
53. *For possession* by one dispossessed of immovable property and disputing the right of the decree holder or purchaser at a sale in execution of a decree.	Thirty days.	The date of dispossession	165
54. *For possession after removing* resistance or obstruction to delivery of possession of immovable property decreed or sold in execution of decree.	Thirty days.	The date of resistance or obstruction.	167
55. For delivery of possession by a purchaser of immovable property at a sale in execution of a decree.	One year.	When the sale becomes absolute.	180
56. For leave to appeal as a pauper	Thirty days.	The date of decree appealed from.	170
57. *To any court for the exercise of its powers of revision under the Code of Civil or Criminal Procedure.*	*Thirty days.*	*The date of the decree or order or sentence sought to be revised.*	
58. *To the High Court for a certificate of fitness to appeal to the Supreme Court under articles* 132(1), 133 & 134 (1)(c) *of the Constitution or under any other law for the time being in force.*	*Thirty days.*	*The date of the decree, order or sentence.*	New

1	2	3	4
59. *To the Supreme Court for special leave to appeal*			
(a) *in a case involving death sentence.*	*Thirty days.*	*The date of the judgment, final order or sentence.*	New
(b) *in a case where leave to appeal was refused by the Court.*	*Sixty days.*	*The date of the order of refusal.*	153
(c) *in other cases*	*Ninety days.*	*The date of judgment or order.*	179
60. Other applications for which no period of limitation is provided *by any law for the time being in force.*	Three years.	When the right to apply accrues.	181

NOTE.— Articles deleted (*Vide* notes) 1, 5, 17, 18, 45, 4 95, 96, 121 and 130.

APPENDIX I

EFFECT OF THE PROPOSALS ON THE EXISTING PERIODS OF LIMITATION

Period increased	Period retained	Period reduced
Suits		
2, 6, 7, 8, 9, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 (90 days to 3 years; One year to three years)	10, 11, 11-A, 12, 13, 14, 37 to 115, 123 to 127, 132, 134 to 144, 146, 146-A, 147	116, 117, 118, 119, 120, 122 (6 years to 3 years); 128, 129, 130, 131, 145 (12 years to 3 years); 148 (60 years to 12 years); 149 (60 years to 30 years)
32, 33, 34, 35, 36 (Two years to three years); 47 (Three years to 12 years).		
Appeals, Applications, etc.		
150 (7 days to 30 days); 151 (20 days to 30 days)	152—154, 157—159, 163—170	155, 171, 172 (60 days to 30 days)
160 (15 days to 30 days); 161 (15 days to 30 days); 162 (20 days to 30 days)	174, 175, 179, 181	156, 173, 176, 177, 178 (90 days to 30 days); 180 (3 years to 1 year)
Total		
31 articles	123 articles	22 articles

(Articles 1, 3, 4, 5, 17, 18, 45, 46, 121, 130 have been omitted.)

APPENDIX II

Comparative table showing the Articles in the Existing Act and the Corresponding Article in the Schedule to the Annexure of the report.

Existing Articles (1)	*Corresponding provisions, if any, in the new proposals* (2)	*Existing Articles* (1)	*Corresponding provisions, if any, in the new proposals* (2)
1	(To be omitted)	49	2
2	1	50	1
3	(To be omitted)	51	1
4		52	1
5	(To be omitted)	53	1
6	38	54	1
7	1	55	1
8	1	56	1
9	1	57	1
10	25	58	1
11	26	59	1
12	26	60	1
13	26	61	1
14	26	62	1
15	38	63	1
16	38	64	1
17	(To be omitted)	65	1
18	(To be omitted)	66	1
19	1	67	1
20	1	68	1
21	1	69	1
22	1	70	1
23	1	71	1
24	1	72	1
25	1	73	1
26	1	74	1
27	1	75	1
28	1	76	1
29	1	77	1
30	1	78	1
31	1	79	1
32	1	80	1
33	1	81	1
34	1	82	1
35	1	83	1
36	1	84	1
37	1	85	16
38	1	86	1
39	1	87	1
40	1	88	17
41	1	89	17
42	1	90	18
43	1	91	23
44	24	92	20
45	(To be omitted)	93	22
46	(To be omitted)	94	28
47	14	95	Sec. 18
48	2	96	Do.
48-A	4 & 6	97	1
48 B	5	98	29

(1)	(2)	(1)	(2)
99	1	141	14
100	1	142	13
101	1	143	14
102	2	144	18
103	38	145	3
104	38	146	11
105	10	146-A	36
106	19	147	11
107	1	148	18
108	1	149	37
109	1	150	40
110	1	151	41
111	1	152	40
112	38	153	40
113	1	154	40
114	23	155	40
115	1	156	40
116	1	157	39
117	27	158	42
118	21	159	47
119	22	160	45
120	38	161	48
121	(To be omitted)	162	48
122	27	163	45
123	30	164	46
124	31	165	53
125	32	166	52
126	33	167	54
127	34	168	43
128	35	169	46
129	22	170	56
130	(To be omitted)	171	44
131	1	172	43
132	11	173	48
+		174	51
134	5,10	175	49
134-A	9	176	43
134-B	9	177	43
134-C	9	178	82
135	12	179	59
136	14	180	55
137	14	181	66
138	14	182	50
139	15	183	50
140	14		

APPENDIX III

SUGGESTIONS IN RESPECT OF OTHER ACTS

I. **Contract Act.**—(1) The definition of the word 'Contract' should be amplified to include '*quasi* contracts', consistently with the trend of modern opinion in other countries in favour of accepting the principle of restitution of unjust benefit or unjust enrichment as the basis of claim. (Paragraphs 11 to 12).

(2) The decision of the Madras High Court in *Annapurnamma* v. *Akayyu,* 36 Madras 554 is that one joint creditor could give a valid discharge so as to bind the other. The other High Courts have taken a different view. The latter view should be confirmed as the correct view by suitable amendments to section 38 of the Contract Act. (Paragraph 27).

II. **Specific Relief Act.**—Section 9 of the Act has encouraged unnecessary litigation as any decision in a suit under that provision is not final. whatever be the decision, another regular suit to establish title is always open and is generally filed. The section should be deleted. (Paragraph 145).

III. **Civil Procedure Code.**—(1) The provisions relating to claim petitions and claim suits help only to encourage multiplicity of proceedings. The same questions as regards claims and objections are first decided in summary proceeding and the parties are then driven to suits under order 21 rules 63 and 103. It would be better if the claims or objections at the petition stage are themselves treated as suits and disposed of. (Paragraph 149).

(2) Section 48 of the C.P.C. providing an absolute period of limitation for execution applications may be deleted as a consequence of the provisions therein being taken over to the Limitation Act. (Paragraph 170).

(3) The definition of decree in Section 2(2) should include awards under Section 11 of Land Acquisition Act. (Paragraph 151).

IV. **Insolvency Acts.**—The most effective way of instilling a healthy fear in the minds of dishonest judgment-debtors would be to provide that if a decree for money remains unsatisfied for a period of six years it would

constitute an act of insolvency and the court may, on the application of the decree holder declare the judgment-debtor as an insolvent. Such a provision has been made by the Bombay Amendment to the Presidency Towns Insolvency Act and a similar provision may be adopted for the rest of India. (Paragraph 171).

V. **Land Acquisition Act.**—(1) The award by the Collector under section 11 should be made enforceable by treating it as a decree within the meaning of section 2(2) of the C.P.C. (Paragraph 151).

(2) A time limit, say 6 months, should be fixed within which the Collector must pay or deposit the compensation and on application by any person interested, the court may direct the deposit of the amount in court. (Paragraphs 151, 152).

VI. **Succession Act.**—(1) The provisions in the Legal Representatives' Suits Act and the Fatal Accidents Acts relating to the question of survival of the cause of action should be brought under the Succession Act by amending section 306 appropriately. (Paragraph 115).

(2) Actions for malicious prosecution should be brought within the exception to section 306. (Paragraph 115).

VII. **Legal Representatives' Suits Act.**—The provision which prescribes that the actions should be in respect of a wrong committed within one year before the death should be deleted having regard to the period of limitation now proposed, for such actions, *viz.*, three years from the date of cause of action. (Paragraph 114).

VIII. **Arbitration Act.**—An award can be enforced only by filing it in court and obtaining a judgment thereon and a suit cannot be filed on the award. Even to set aside an award, it is necessary to have it filed first. Provisions such as those in section 37(2) recognising partial or preliminary arbitrations would seem to need revision. (Paragraph 172). A time limit of 30 days should also be prescribed for the arbitrotor to file the award.

IX. **Transfer of property Act.**—It is doubtful whether in view of the definition of 'English mortgage' in the Act, the mortgagee under this mortgage would be entitled to recover possession. The position should be clarified (Paragraph 125).

X. **Easements Act.**—The Act should be extended so as to apply to the whole of India. (Paragraph 56).

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